The current results appear favorable to advocates of joint custody (e.g., Bender, 1994) who favor a presumption of joint custody in divorce cases. By the early 1990s, most states had introduced laws making joint custody available as an option, or even as a rebuttable presumption, in divorce cases (Bruch, 1992). However, current research suggests that judges in some areas continue to show a strong preference for maternal custody and tend to oppose joint physical custody (Stamps, Kunen, & Rock-Facheux, 1997). It is important to recognize that the findings reported here do not demonstrate a causal relationship between joint custody and better child adjustment. However, the research reviewed here does not support claims by critics of joint custody that joint-custody children are likely to be exposed to more conflict or to be at greater risk of adjustment problems due to having to adjust to two households or feeling "torn" between parents. Joint-custody arrangements (whether legal or physical) do not appear, on average, to be harmful to any aspect of children's well-being, and may in fact be beneficial. This suggests that courts should not discourage parents from attempting joint custody.

It is important to recognize that the results clearly do not support joint custody as preferable to, or even equal to, sole custody in all situations. For instance, when one parent is clearly abusive or neglectful, a sole-custody arrangement may be the best solution. Similarly, if one parent suffers from serious mental health or adjustment difficulties, a child may be harmed by continued exposure to such an environment. Also, some authors have proposed that in situations of high parental conflict, joint custody may be detrimental because it will expose the child to intense, ongoing parental conflict (e.g., Johnston et al., 1989). However, this last argument may be applicable mainly to extremes of parental conflict. Some research indicates that joint custody may actually work to reduce levels of parental conflict over time, meaning that whatever risk exposure to parental conflict involves will be reduced (Bender, 1994).

Results of custody and adjustment studies need to be communicated more widely to judges, lawyers, social workers, counselors, and other professionals involved in divorce counseling and litigation, as well as divorce researchers in general. Such communication could lead to better-informed policy decisions based on research evidence, and better-informed decision making in individual cases. There continues to be an urgent need for additional research on child custody and adjustment that corrects problems such as small sample sizes, inadequate control of confounding variables, and inadequate reporting of statistical results. However, the available research is consistent with the hypothesis that joint custody may be beneficial to children, and fails to show any clear disadvantage relative to sole custody.

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APPENDIX A

Stem-and-Leaf Display of Measure-Level Effect Sizes

Table 1.

Appendix

Stem-and-Leaf Display of Measure-Level Effect Sizes

Extremes: 1.36, 2.50	
1.2	8
1.1	5 9
1.0	2 9
0.9	7 8 9
0.8	2 3 4 4 6
0.7	0 2 2 8 8
0.6	0 1 7 8
0.5	1 1 1 3 4 5 5 6 8
0.4	0 1 2 2 3 5 5 5 6 6 7 8 8 9
0.3	0 2 4 6 7 7 7 9 9
0.2	0 0 0 1 1 2 3 3 4 4 4 4 4 4 4 7 7 7 9
0.1	0 0 0 2 2 2 3 3 4 4 6 6 6 7 7 7 8 8
0.0	0 0 0 0 0 0 0 0 0 0 1 2 2 4 4 4 5 6 6 7 8 9
−0.0	1 4 4 6 7
−0.1	0 3 4 6
−0.2	4 5 6 9
−0.3	0 0 0 2 6 8
−0.4	3
−0.5	1 4
Extremes: −0.74, −1.13	

High: 2.5
75th percentile: 0.48
Median: 0.23
25th percentile: 0.01
Low: −1.13

This research was not done as part of official duties with the Maryland Department of Health and Mental Hygiene or under its auspices.

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Received: September 6, 2000
Revised: March 13, 2001
Accepted: July 25, 2001

Table 1. Study Variables and Study-Level Effect Sizes

Table 1
dy Variables and Study-Level Effect Sizes

Author	Author sex	Sample size		Definition[a]	Proportion boys		Proportion mothers[b]	Current age		Age at divorce		Published
		Joint	Sole		Joint	Sole		Joint	Sole	Joint	Sole	
Bowman (1983)	F	28	54	2			1.00	8.6	9.0			N
Bredefeld (1985)	M	20	20	1	.75	.65	1.00	9.1	9.7	4.2	2.5	N
Buchanan et al. (1991)	F	52	384	1	.51	.51	.78	14.3	14.3	9.8	9.8	Y
Cowan (1982)	F	20	20	1	.50	.50	1.00	10.5	10.5	8.2	7.8	N
Crosbie-Burnett (1991)	F	26	52	2	.44	.44	NA	15.0	15.0			Y
Donnelly and Finkelhor (1992)	F	19	141	2			NA	12.4	12.4			Y
Glover and Steele (1989)	F	8	8	1	.63	.38	NA	10.6	11.1	8.6	9.0	Y
Granite (1985)	F	20	19	2	.65	.48	.50	10.5	11.0	7.5	8.1	N
Gunnoe & Braver (2001)	F	28	51	2	.61	.49	1.00	10.9	10.9	7.9	7.9	N
Hendrickson (1991)	M	10	10	1	.63	.63	1.00			15.2	15.2	N
Isaacs et al. (1987)	F			1			.71	10.5	10.5	5.8	5.8	Y
joint physical		41	117	2								
joint legal		44	117	1	.50	.50	1.00	6.5	6.5	4.5	4.5	Y
Johnston et al. (1989)	F	35	53	1	.44	.55		8.5	8.5	8.3	8.3	N
Karp (1982)	F	16	22	1	.41	.38		9.9	9.8	4.7	4.8	N
Kaulfmann (1985)	F	17	13	1	.48	.50	.90	12.0	12.0	5.5	5.5	N
Lakin (1994)	M	40	40	1	.45	.48	1.00	7.5	7.5	4.0	4.0	N
Lee (1993)	NA	20	39	2	.43	.43	1.00	9.5	9.6	5.9	5.7	N
Lerman (1989)	F			1								
joint physical		30	30	2								
joint legal		30	30	2	.53	.48	.59	11.4	11.8	9.8	8.6	N
Livingston (1984)	F	32	54	1			1.00	9.5	12.0	6.0	8.2	Y
Luepnitz (1982)	F	25	34	1	.59	.46	.88	9.5	9.5			N
Mann (1984)	M	32	26	2	.61	.61	.92	12.5	12.5			N
Mensink (1987)	M	8	64	1	.45	.45		8.1	8.1			N
Noonan (1985)	F	20	20	2	.50	.50		9.5	9.5			N
Nunan (1980)	F	20	20	1	1.00	1.00						N
Pojman (1981)	M	20	20	1	.48	.48	1.00	10.3	10.5	7.1	4.4	N
Rockwell-Evans (1991)	F	21	21	1	1.00	1.00	1.00	8.5	8.5	5.0	5.0	Y
Shiller (1986)	F	20	20	1	.52	.52	.83	16.5	16.5	6.8	6.8	Y
Silitsky (1996)	M	32	169	2	.47	.50	1.00	10.1	10.0	6.5	5.6	N
Spence (1992)	F	15	30	2								N
Vela-Trujillo (1996)	F	19	26	2			1.00	14.5	14.5			N
Walker (1985)	F	12	15	1			1.00	15.1	15.1	12.3	12.3	N
Warren (1983)	F	17	37	1			.50	9.9	9.9	7.1	7.1	N
Welsh-Osga (1982)	F	10	10	1	.50	.50	1.00	11.1	11.7	9.9	10.5	Y
Wolchik et al. (1985)	F	44	89	2	.55	.39						

Note. Mean weighted effect size, d = .23; mean unweighted effect size (each study = 1), d = .27; median effect size, d = .209 (Bowman, 1983). F = female; M = not published; Y = published. NA = not available. Detailed information on the measure-level effect sizes from each study are available from the author.
[a] A code of 1 means joint custody was defined on the basis of time spent with each parent (joint physical custody); a code of 2 refers to joint legal custody, mixed or undefined. [b] The proportion of mothers with physical custody in the sole custody group.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
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Suggested citation

Bramlett MD and Mosher WD. Cohabitation, Marriage, Divorce, and Remarriage in the United States. National Center for Health Statistics. Vital Health Stat 23(22). 2002.

Library of Congress-in-Publication Data

Cohabitation, marriage, divorce, and remarriage in the United States.
p. cm.— (Vital and health statistics. Series. 23, Data from the national survey of family growth; no 22)
ISBN 0-8406-0582-X
1. Marriage—United States—Statistics. 2. Women —United States—Statistics. 3. Unmarried couples—United States—Statistics. 4. Divorce—United States—Statistics. 5. Remarriage—United States—Statistics. I. National Center for Health Statistics (U.S.) II. Series.
HB1125 .C64 2002
306.81'.0973'09049—dc21

2002075369

For sale by the U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SSOP
Washington, DC 20402-9328
Printed on acid-free paper.

Vital and Health Statistics

Series 23, Number 22

Cohabitation, Marriage, Divorce, and Remarriage in the United States

Data From the National Survey of Family Growth

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for Health Statistics

Hyattsville, Maryland
July 2002
DHHS Publication No. (PHS) 2002-1998

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Abstract

Objectives

This report presents national estimates of the probabilities of marital and cohabitation outcomes for women 15–44 years of age in 1995, by a wide variety of individual- and community-level characteristics. The life-table analysis in this report takes a life cycle approach to estimate the probabilities that:

- a woman will marry for the first time,
- an intact first cohabitation will make the transition to marriage,
- a first cohabitation will end in separation,
- a first marriage will end in separation or divorce,
- a disrupted first marriage will be followed by a new cohabitation,
- a separation from first marriage will result in divorce,
- a divorce from first marriage will be followed by remarriage, and
- a second marriage will end in separation or divorce.

Methods

The life-table estimates presented here are based on a nationally representative sample of women 15–44 years of age in the United States in 1995 from the National Survey of Family Growth, Cycle 5.

Results

The analyses show that various individual and community-level characteristics are related to the marital and cohabitational outcomes examined in this report. The results consistently demonstrate that the cohabitations and marriages of non-Hispanic black women are less stable than those of non-Hispanic white women. An analysis of trends over time suggests that differences by race/ethnicity are becoming more pronounced in recent years. Racial differences observed are associated with individual characteristics and with the characteristics of the communities in which the women live.

Keywords: cohabitation • marriage • separation • divorce • remarriage • context

Cohabitation, Marriage, Divorce, and Remarriage in the United States

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Highlights

This report presents data from Cycle 5 of the National Survey of Family Growth (NSFG). The NSFG is a nationally representative survey focused on marriage, divorce, contraception, infertility, and other factors affecting pregnancy and birth rates and women's health. Cycle 5 of the NSFG was based on face-to-face interviews with 10,847 women 15–44 years of age in 1995. The analysis of trends in this report is based on data from the 1973, 1976, 1988, and 1995 cycles of the NSFG. For convenience in writing in the text of this report, non-Hispanic white women are often referred to as "white" and non-Hispanic black women are often referred to as "black." The full labels are always used in the tables and graphs.

This report contains 44 detailed tables showing analyses of eight outcomes related to cohabitation and marriage: the probability that a woman will marry for the first time, the probability that an intact first premarital cohabitation will become a marriage, the probability that a first premarital cohabitation will break up, the probability that a first marriage will break up, the probability that a woman whose first marriage has disrupted will enter a new cohabitation, the probability that a separation from first marriage will become a legal divorce, the probability that a divorced woman will remarry, and the probability of second marriage disruption. A wide variety of characteristics of women and the communities in which they live are used to examine these cohabitation and marital outcomes.

The analyses in this report are intended to provide a statistical description, not a definitive or exhaustive explanation of these topics. The data shown here are intended to suggest that both characteristics of individuals and the communities in which they live are often important factors in understanding cohabitation and marriage and to encourage researchers to consider these factors when studying these issues. This report also attempts to shed light on at least five important issues in the recent statistical literature on marriage and divorce:

- What are the recent trends in marital breakup, divorce, and remarriage?
- Do the trends in these outcomes differ by race/ethnicity?

The 1995 National Survey of Family Growth was jointly planned and funded primarily by the National Center for Health Statistics, the National Institute for Child Health and Human Development (NICHD), the Office of Population Affairs, and the National Center for HIV, STD, and TB Prevention, with additional support from the Children's Bureau. The authors gratefully acknowledge the technical assistance of Wayne E. Johnson, Ph.D., of the Office of Research and Methodology for assistance in estimating standard errors of the statistics in this report. The authors gratefully acknowledge the helpful review and comments of Dr. V. Jeffery Evans of NICHD. This report was edited by Patricia Keaton-Williams, graphics produced by Jarmila Ogburn, and typeset by Jacqueline M. Davis.

- Are characteristics of communities related to couples' success in marriage?
- Is the statistical portrait of marriage affected if we measure unmarried cohabitation and separation from marriage as well as legal marriage and divorce?
- What demographic, economic, and social factors affect the chances that marriage will succeed or fail?

What are the trends? Our data show an increase in the chances that first marriages will end (in separation or divorce) for marriages that began in the 1950s through the 1970s. From the early 1970s to the late 1980s, the rates of breakup were fairly stable. The probability of remarriage following divorce has decreased slightly, and the probability that the second marriage will break up has risen from the 1950s to the 1980s.

Do the trends differ by race/ethnicity? It appears that these trends were similar for non-Hispanic white and non-Hispanic black women, but black women faced higher rates of marital breakup, lower rates of making the transition from separation to divorce, and lower rates of remarriage. Among white women, the increasing probability of first marriage breakup leveled off in the 1970s but appears to have continued rising for black women through the 1980s.

Are characteristics of communities related to success in marriage? This report shows clear evidence that community prosperity is related to successful cohabitations and marriages, and that neighborhood poverty increases the likelihood that cohabitations and marriages will fail.

Is the statistical portrait of union formation and dissolution affected if we measure unmarried cohabitation and separation from marriage as well as legal divorce? One major advantage of survey data on marriage is that we are not limited to examining legal marriage and divorce. The data in this report show that the probability that an intact premarital cohabitation will result in marriage is 70 percent after 5 years; that probability is associated with the woman's race, age, education, the household's income, and the economic opportunities in the community. The data also show that a great many marriages end in legal separation but not in divorce, and that looking only at divorce greatly understates marital disruption among some groups—especially non-Hispanic black and Hispanic women.

What demographic, economic, and social factors affect the chances that marriage will succeed or fail? This report shows that a number of characteristics are closely associated with the chances that a marriage will continue or break up. For first marriages, for example, marriages are less likely to break up, and more likely to succeed, if the wife grew up in a two-parent home, is Asian, was 20 years of age or over at marriage, did not have any children when she got married, is college-educated, has more income, or has any religious affiliation.

The following highlights illustrate the kinds of findings shown in this report:

The probability of first marriage is lower for non-Hispanic black women than for other women (figures 1 and 2). Getting married by the 18th birthday is more likely for Hispanic and non-Hispanic white women and less likely for non-Hispanic black and Asian women (figure 2). First marriage is less likely for women who report that their religion is not important (figure 3). Early marriage is more likely for women in communities with higher male unemployment, lower median family income, higher poverty and higher receipt of welfare (figure 4). First marriage is more likely in nonmetropolitan areas and less likely in central cities (figure 5).

The probability that an intact first premarital cohabitation becomes a marriage is higher among white women and lower among black women (figure 6); higher among couples with higher incomes than for couples with lower incomes (figure 7); and higher for cohabiting women with any religious affiliation than for those with no religious affiliation, especially among white women (figure 8). Marriage is more likely for cohabiting white women who report that their religion is either somewhat or very important than for those who report that their religion is not important (figure 9).

Cohabiting women are more likely to marry if they live in communities with lower male unemployment, higher median family income, lower poverty, and lower receipt of welfare (figure 10). The male unemployment rate seems to be more important among black women than among white women (figure 11).

After the first 3 years of cohabitation, **the probability that a first premarital cohabitation breaks up** is higher among black women than among Hispanic or white women (figure 12) and is higher among younger than older women (figure 13), especially among white women (figure 14). Women who have ever been forced to have intercourse before the cohabitation began are more likely to experience the breakup of their first premarital cohabitation than women who have never been forced (figure 15).

Cohabiting women are more likely to experience the breakup of their first premarital cohabitation if they live in communities with higher male unemployment, lower median family income, and higher rates of poverty and receipt of welfare (figures 16 and 17).

Black women are more likely to experience **first marital disruption** and Asian women are less likely to experience first marital disruption, compared with white or Hispanic women (figure 18). First marriages of women who are 20 years of age or over at marriage are less likely to break up than marriages of teenaged brides; but there is no significant difference by age at marriage among Hispanic women (figure 19). Women whose religion is somewhat or very important are also less likely to experience a breakup of their first marriage than those whose religion is not important (figure 20).

Women who lived with both parents throughout childhood are less likely to experience the breakup of their first marriage than women who were not raised with two parents throughout childhood (figure 21). Women who have never been forced to have intercourse before marriage are less likely to

experience the breakup of their first marriage than women who have ever been forced to have intercourse before marriage (figure 22). The chance of marital disruption is lower if the wife had her first birth after marriage (figure 23).

Women who have ever suffered from generalized anxiety disorder (GAD) are more likely to experience the breakup of their first marriage than women who have never suffered from GAD (figure 24). Interracial marriages are more likely to disrupt than marriages in which both spouses are the same race/ethnicity (figure 25). First marriages are more likely to disrupt in communities with higher male unemployment, lower median family income, higher poverty, and higher receipt of welfare (figures 26 and 27).

Entering a new cohabitation after the first marriage ends is more likely among white women than black women (figure 28); more likely among women with no religious affiliation than women with any religious affiliation (figure 29); more likely if she has few or no children (figure 30); and more likely for women who live in communities with low male unemployment, poverty, and receipt of welfare (figure 31).

Separated white women are more likely to complete the legal divorce process than separated Hispanic or black women (figure 32). The transition from separation to divorce is less likely among women who live in less prosperous communities (figure 33).

The probability of remarriage is highest among white divorced women and lowest among black divorced women (figure 34). Remarriage is more likely among women who were under age 25 at divorce than among women ages 25 and over at divorce (figure 35). Remarriage is more likely for divorced women who live in communities with lower male unemployment, poverty, and receipt of welfare (figure 36). Remarriage is more likely for women who live in nonmetropolitan areas and is least likely for women who live in the central cities of metropolitan areas (figure 37).

Black women are more likely to experience **the breakup of their second marriage** than other women (figure 38); second marriage disruption is more likely among women who were younger than age 25 at remarriage than women who were older at remarriage (figure 39), more likely among women who were not raised throughout childhood with two parents (figure 40), more likely among women who have ever been forced to have intercourse before marriage than women who have never been forced to have intercourse before marriage (figure 41), and more likely among women who have ever suffered from GAD than women who have never suffered from GAD (figure 42).

Women with no children at the start of the second marriage are the least likely to experience second marital disruption. Among those with children at remarriage, those with any unwanted children are more likely to experience a second marital disruption than those with no unwanted children (figure 43). Women who live in communities with higher male unemployment, lower median family income, higher poverty, and higher receipt of welfare are more likely to experience the second marital breakup (figure 44).

Although the statistics presented in this report are descriptive in nature, it is possible to observe how the characteristics of individuals and communities may be related to the stability of cohabitations and marriages. Cohabitations and marriages tend to last longer if the woman was older at the time the cohabitation or marriage began, if her family income is higher, if she has any religious affiliation or reports that her religion is important to her, if she was raised through childhood in a two-parent intact family, if she had never been forced to have intercourse, if she had no children at the start of the cohabitation or marriage, if her first birth was at least 8 months after the beginning of the cohabitation or marriage, if she has never suffered generalized anxiety disorder, if she is the same race/ethnicity as her husband, or if she lives in communities with higher median family income, lower male unemployment, less poverty, less receipt of welfare, and more adults who are college-educated. Some of these characteristics show stronger effects for the stability of marriage than for the stability of cohabitation, and some of the effects vary by race/ethnicity.

Introduction

Marriage is associated with a variety of positive outcomes, and dissolution of marriage is associated with negative outcomes—for men, women, and their children. A full analysis of the benefits of marriage—to either children or spouses—is beyond the scope of this report; but this brief review should serve to highlight the importance of the data described in this report. The purpose of this report is to present estimates of the patterns of cohabitation, marriage, divorce, and remarriage in the United States as of 1995, by a wide variety of individual- and community-level characteristics. We do not attempt to provide rigorous explanations for the many findings reported here. The intent is to present the findings in a statistically sound format, in greater detail than has ever been done for the United States, and thus to encourage more understanding and further study of these important topics.

Compared with unmarried people, married men and women tend to have lower mortality, less risky behavior, more monitoring of health, more compliance with medical regimens, higher sexual frequency, more satisfaction with their sexual lives, more savings, and higher wages (1–3). The differences between married and unmarried people may reflect a causal effect of marriage or a selection effect. Healthier people may be more likely than others to find mates and marry. Research has suggested that the benefits of marriage may be partially due to a selection effect and partially due to true benefits to be gained from being married as opposed to being unmarried (3,4). A lower mortality risk among the married has been shown to persist even after health in early adulthood was controlled, suggesting that at least part of the benefit of being married is not the result of selection (4).

Compared to married individuals, divorced persons exhibit lower levels of

psychological well-being, more health problems, greater risk of mortality, more social isolation, less satisfying sex lives, more negative life events, greater levels of depression and alcohol use, and lower levels of happiness and self-acceptance (5). The economic consequences of divorce can be severe for women. Most often, children remain with the mother after divorce; the loss of the ex-husband's income often results in a severe loss of income per capita (6,7). For a man, the retention of income combined with decreased family size may actually result in an increase in his new household's income per capita (6,8).

Adverse outcomes accrue to children of divorce and children raised in single-parent families. Although not all single-parent families are the result of divorce and not all divorced mothers remain single, virtually all children of divorce spend some time in a single-parent household until the mother remarries. Even when the mother does remarry, studies suggest that children in stepfamilies have similar risks of adverse outcomes as children in single-parent families: both groups of children do worse than children living with two biological parents in terms of academic achievement, depression, and behavior problems such as drug and alcohol abuse, premarital sexual intercourse, and being arrested (9).

Single-parent families have lower levels of parental involvement in school activities and lower student achievement, compared to two-parent families (10). Children raised in single-parent families are more likely to drop out of high school, have lower grades and attendance while in school, and are less likely to attend and graduate from college than children raised in two-parent families (11). They are more likely to be out of school and unemployed and are also more likely to become single parents themselves, than children raised in two-parent families (11). Studies have found that, compared to children in two-parent families, children of divorce score lower on measures of self-concept, social competence, conduct, psychological adjustment and long-term health (5).

The positive health benefits of marriage and the negative consequences of divorce illustrate the importance of examining trends and differentials in the patterns of marriage and divorce over time.

Trends and Differences in Marriage and Divorce

In the United States during the second half of the twentieth century, the proportion of people's lives spent in marriage declined due to postponement of marriage to later ages and higher rates of divorce (12). The increase in nonmarital cohabiting has also contributed to the decline in the proportion of peoples' lives spent in marriage. Increasing rates of cohabitation have largely offset decreasing rates of marriage (13,14).

The proportion of time spent in marriage has varied across demographic subgroups. Since 1950, the marital patterns of white and black Americans have diverged considerably. About 91 percent of white women born in the 1950s are estimated to marry at some time in their lives, compared with only 75 percent of black women born in the 1950s (13). Black married couples are more likely to break up than white married couples, and black divorcees are less likely to remarry than white divorcees (13).

The degree of attachment to marriage among black Americans is similar to that of white Americans as measured by attitudes toward marriage (15,16). One explanation offered by some researchers for the lower proportion of time spent in marriage among black Americans is the idea of a "marriage squeeze," in which the "marriageable pool" of black men is low due to high rates of joblessness, incarceration, and mortality (17–19). Employed men are more likely than unemployed men to marry (20).

In addition to race and employment status, other characteristics of individuals that have been found to be related to a higher probability of getting married include higher education and earnings (21). Characteristics related to getting married earlier include growing up in a disrupted family and higher levels of parents' education (22). Characteristics of individuals related to a higher probability of divorce include younger age at marriage, lower education and later birth cohort (23), later marriage cohort and presence of a premarital birth (24), premarital cohabitation (25), and premarital sexual activity (26). Catholic white women are less likely to divorce than non-Catholic white women (24). Marital dissatisfaction has been found to be associated with psychiatric disorders such as GAD, depression, and panic (27). Other characteristics related to a lower probability of remarriage include higher education and older age at divorce (28) and presence of children from prior marriages (9).

Lower economic prospects for less-educated young men have been hypothesized to decrease the probability of marriage. The increasing economic independence of women has also been hypothesized to decrease the probability of marriage, although recent evidence suggests that the increasing economic independence of women may actually increase the probability of marriage as earnings and employment may make either partner an attractive potential spouse (17,21). Marriage market conditions may also play a role, in that the probability of divorce is higher in areas with large numbers of economically attractive potential alternate partners (17,29).

A full analysis of all of the individual- and community-level characteristics associated with cohabitation, marriage, and divorce is beyond the scope of this report. The purpose of this report is to present estimates of the patterns of cohabitation, marriage, divorce, and remarriage in the United States as of 1995 by a wide variety of demographic and community characteristics. The individual characteristics include some which have been shown to be related to marital outcomes in the literature cited above: age, race/ethnicity, education, income, employment status, religion, family background, parity, GAD, and whether the woman cohabited with her husband before marriage (9, 13, 20–28). Other individual characteristics have been found in other analyses of the National Survey of Family Growth (NSFG) to be

correlated with related variables such as marital status, age at marriage, or year of marriage: forced intercourse, timing of first birth, and whether births were unwanted (30).

Some of these individual characteristics are not available for all analyses. For example, whether the marriage was preceded by cohabitation is only appropriate for analyses of first- and second-marriage duration. Some characteristics do not always have enough cases to use in some analyses. For example, parity is measured as the number of children born by the start of the analysis interval, and the interval for the analysis of first marriage begins at age 15; the number of women who had given birth before age 15 was insufficient for analysis of this variable. Where possible, analyses were run by various different measurements of these variables. Analyses of all outcomes are presented by religious affiliation and the importance of religion. For analyses of first- and second-marriage disruption, results are presented by the wife's age and by the age difference with her husband, and by the wife's race/ethnicity and by the race difference with her husband (the age difference with partner and race difference with partner are not available for analysis of the first cohabitation because of the large amount of missing data in the woman's report of her first cohabiting partner's characteristics).

Basic measures of residence such as region of residence and metropolitan status are included here. Other measures of the characteristics of the community measured at the census-tract or county level are also included: the male unemployment rate, median family income, percent of households below poverty, percent of families receiving public assistance, percent of adults with college education, the crime rate in the county, and the percent of women never-married.

The analysis of each outcome is presented by each individual and community characteristic separately. The results are descriptive and are not meant to represent a definitive explanation of these outcomes. Further analysis using multivariate techniques may reveal that some of the characteristics in this report are more or less important than others, but such analysis is beyond the scope of this report. The estimates in this report are based on Cycle 5 of NSFG, conducted in 1995 by the Centers for Disease Control and Prevention (CDC)/National Center for Health Statistics (NCHS). Preliminary estimates of first marriage disruption, the transition from separation to divorce, remarriage, and second marriage disruption by race/ethnicity and age based on the 1995 NSFG were published previously (31).

Data Sources

There have been several sources of data on marriage, divorce, and cohabitation in the United States in recent decades, but few are still active:

- Until 1995, the NCHS Vital Statistics program included marriage and divorce registration data. The collection of individual record data ended with data year 1995, and since then only annual total counts of marriages and divorces have been available (32). That system previously gave annual rates of legal marriage and divorce by marriage order and age but had no data on the lifetime probability of divorce by other characteristics and included no data on cohabitation or separation.
- The U.S. Census Bureau's Current Population Survey (CPS) previously contained a marital history supplement to the June CPS every 5 years in 1980, 1985, 1990, and 1995, but was not continued after 1995 (33).
- The National Survey of Families and Households, conducted by the University of Wisconsin-Madison Center for Demography and Ecology, was a comprehensive survey covering many aspects of cohabitation and marriage and was especially useful because of its longitudinal design, allowing for the prediction of outcomes based on covariates measured before those outcomes. However, the sample was originally drawn in 1987 and the last data collection was in 1992–94, although a third wave of data is being collected in 2001–02 (34).
- The U.S. Census Bureau's Survey of Income and Program Participation (SIPP) is a longitudinal panel survey of approximately 37,000 households that includes a marital history and a large number of demographic characteristics. The most recent SIPP data available were from the 1996 panel (35). There was no cohabitation history data collected in SIPP, so analysis of the transition from cohabitation to marriage is impossible.
- Cycle 5 of the NSFG was collected in 1995 and contains full cohabitation and marriage histories as well as a large number of potential characteristics to study patterns of cohabitation, marriage, and divorce. In addition, the NSFG Cycle 5 includes data on the characteristics of the communities in which the respondents live, allowing for contextual analysis of cohabitation, marriage, divorce, and remarriage. Cycles 1 through 5 of NSFG can be pooled to perform trend analysis. Unlike most of these other data systems, NSFG is currently ongoing. Cycle 6 of the NSFG is to be collected in 2002, with public-use data files expected to become available in late 2003. Further analysis of new data on these topics collected in 2002 will therefore be possible.

Life Tables on Marriage

There have been numerous studies using life-table techniques to study marriage and divorce in the United States. One study presented first and second marriage dissolution life tables based on the 1973 NSFG (23). Another study (1980) constructed similar tables on first and second marriage based on the Divorce Registration Area annual divorce certificate data (36). Life tables of marriage, widowhood, and divorce have been computed based on published census and vital statistics data (37,38). Other studies have presented statistics on marriage and divorce that are calculated as cumulative percents, which

are similar to estimates obtained in life tables. One such study presented cumulative probabilities of remarriage based on the 1976 NSFG (28). Another study presented cumulative proportions of marriages dissolved based on the 1982 NSFG (22). Because the focus of this report is on the occurrence of certain events (marital disruption, remarriage, etc.) within a specified time frame (duration of marriage, duration of divorce, etc.), life-table techniques are appropriate for this analysis (23). A detailed description of life-table techniques appears in the "Methods" section, and a sample life table appears in Appendix II.

The life tables in this report are based on Cycle 5 of the NSFG, the most recent available data. In addition, a large number of covariates are examined that were not analyzed in the previous studies, including the characteristics of the communities in which women live. We also include cohabitation life tables that were not available in prior studies, including the probability of cohabitation disruption, the probability of a cohabitation becoming a marriage, and the probability of cohabitation after the dissolution of first marriage.

Methods

Data—The national estimates of cohabitation, marriage, and divorce patterns in this report are based on data from the 1995 NSFG. Cycle 5 of NSFG, conducted by CDC/NCHS in 1995, was based on a multistage probability sample of the civilian, noninstitutionalized population of women in the United States, yielding estimates that are representative of women 15–44 years of age in 1995. Between January and October 1995, in-home computer-assisted personal interviews were conducted with 10,847 women, of whom 1,553 were Hispanic women, 6,483 were non-Hispanic white women, 2,446 were non-Hispanic black women and 365 were women of other races and ethnic origins. The overall response rate was 79 percent (30).

The sample list for the 1995 NSFG was selected from households that responded to the 1993 National Health Interview Survey. Non-Hispanic black and Hispanic women were sampled at higher rates than were other women. Sampling weights account for differential probabilities of sample selection and for nonresponse, and are adjusted to agree with control totals by age, race, parity, and marital status provided by the U.S. Census Bureau. The 10,847 women in the 1995 NSFG represent the 60 million women 15–44 years of age in the civilian noninstitutionalized population of the United States in 1995. On average, each woman in the 1995 NSFG represents about 5,500 women in the population, although sample weights vary considerably from this average value depending on the respondent's race, age, and Hispanic ethnicity, the response rate for similar women, and other factors (30,39). See Appendix I, Technical Notes for additional information.

The 1995 NSFG collected complete retrospective histories of each woman's experiences with cohabitation, marriage, and divorce, including the beginning and ending dates of each cohabitation and marriage and the outcome of each union (marriage, separation, divorce, or widowhood) (40). Given these data, the probabilities shown in this report can be estimated using life-table techniques.

Previous analyses of marriage and divorce based on vital statistics have computed and presented annual rates of marriage and divorce (41,42). Rates are snapshots of data limited to a specific year. The life-table analysis in this report takes a life-cycle approach to estimate the probabilities that:

- a woman will get married for the first time,
- an intact first cohabitation will make the transition to marriage,
- a first cohabitation will end in breakup,
- a first marriage will end in separation or divorce,
- a disrupted first marriage will be followed by cohabitation,
- a separation will result in divorce,
- a divorce from first marriage will be followed by remarriage, and
- a second marriage will end in separation or divorce.

These outcomes are presented in this report in the order in which they typically occur in the lives of women and men—that is, in a "life-cycle" order. Each outcome was treated independently. Although it is possible to combine outcomes in multidecrement life tables (such as the formation of the first union as either cohabitation or marriage, or the end of first cohabitation in either breakup or marriage), that is beyond the scope of this report.

Previous analysis of divorce and remarriage based on Cycle 4 of NSFG used a measure of the cumulative proportion of marriages disrupted as of interview to describe the phenomena (43). This statistic is a refinement of a rate, approximating the estimates that life-table analysis provides. However, it is only a single measure of the cumulative proportion at the time of interview; life tables provide estimates of cumulative proportions at every time point in the life course of a marriage.

Life Tables—The life table is a tool that demographers and statisticians use most often to study mortality, but it is also often applied to the study of marital stability. In studying mortality, the cohort life table is a summary of the mortality history of a given cohort from birth to death (a cohort is a group of people born in the same year; e.g., the 1950 cohort includes persons born in 1950), and requires data on the longevity of all cohort members, a span of more than 100 years. As a result, the period life table is typically used as a model of what would happen to a given cohort if the age-specific death rates from a certain point in time were to remain fixed for the duration of the cohort's life (44,45).

As members of the cohort age, they are subjected to the age-specific death rates of successive age categories in the life table. At each interval, the age-specific death rate for that interval is used to calculate how many members of the cohort die during that interval. That number of deaths is subtracted from the count of cohort members, and the result is the number of cohort members who survive to go on to the next interval. Eventually, the last age interval is reached and the last cohort members die. One overall measure of longevity is the proportion who survive

to specific ages (44). Survivor curves can be plotted that show the proportion of the cohort surviving to each successive age category (45,46).

To apply life table analysis to the study of marital (or cohabitation) stability, the cohort of people is replaced with a cohort of marriages (or cohabitations); age is replaced by union duration, and death is replaced by breakup, separation, or divorce. A mortality life table is used to analyze death, which is a one-time event that cannot be reversed, whereas a marital life table is used to analyze marriage, which can occur more than once and can be reversed. However, there is little conceptual difference between the two if one considers that the event of a first marriage cannot be reversed (a married woman can become unmarried, but cannot change the fact that she experienced the event of a first marriage).

There is an additional issue that must be addressed in order to apply life-table analysis to the study of marital outcomes. The NSFG sample of women is limited to ages 15–44, so the marriage histories are incomplete. For respondents whose marriage has not yet ended as of interview, the end date of the marriage is unknown, and it is not known how the marriage will end; therefore the duration of the marriage is unknown, and is referred to in statistical literature as "censored." Life table procedures allow for the simultaneous analysis of complete and incomplete marriage histories (23).

Life table analysis can handle censored cases by keeping such cases in the analysis as long as they are at risk of disruption and then dropping them out once the risk is unknown (47). For example, when calculating the proportion of marriages that dissolve in each duration interval, a marriage that has existed for 24 months and still exists intact at interview would remain in the denominator for each duration interval until 24 months of duration is reached; after that, the case would no longer be used in the calculations.

Widowhood removes a marriage from the risk of dissolution. The length of time that the marriage would have endured intact if the husband had not died is unknown, so cases of widowhood are censored (removed from the analysis) at the date of the death of the husband. Widowhood is very rare among women in the age group 15–44. The mortality of the wives is unobservable, as the woman had to have been alive in order to be interviewed. As the risk of mortality among women in the age range 15–44 is low, this is unlikely to affect the results substantially.

The basic measure used in this report is the probability that a marriage or cohabitation will end in separation or divorce. For convenience and brevity in this report, this measure is referred to as the probability of dissolution or the probability of disruption. In this sense, dissolution or disruption means "to break apart" or break up. For analysis of first- or second-marriage disruption, the duration of the marriage is measured in months from the start of the marriage until the separation or divorce (marriages ending in widowhood or still intact at interview are censored). For analysis of cohabitation disruption, duration is measured from the start of the cohabitation until the end of the cohabitation, or if the couple married during the relationship, from the start of the cohabitation until the separation or divorce (cohabitations ending in the death of the partner or still intact at interview are censored). Cohabitations that had already made the transition to marriage are included in the analysis of cohabitation disruption because the analysis focuses on how long the actual relationship endures rather than how long particular legal definitions endure.

For the interval to first marriage, duration is measured from the 15th birthday to the date of first marriage. Women who never married are censored at interview. For the transition from cohabitation to marriage, duration is measured from the start of the cohabitation to the date of first marriage. Cohabitations ending in death of the partner or disruption, or still intact and unmarried at interview, are censored. For the interval until post-marital cohabitation, duration is measured from the date of the end of the first marriage until the start of a new cohabitation. Women who remarried without first cohabiting or who remained unmarried and did not enter a new cohabitation by the time of the interview are censored. For the transition from separation to divorce, duration is measured from the date of separation from first marriage to the date the divorce was finalized. Women who never made the transition to divorce by the time of the interview are censored. For remarriage, duration is measured from the date of the divorce to the date of the second marriage. Women who never remarried by the time of the interview are censored.

A woman 30 years of age at the time of her marriage cannot be included in a measure of the probability of dissolution after 20 years of marriage, because she would have been 50 years of age after 20 years of marriage, and the maximum age of women in the NSFG sample was 44. Because of the age limitation on the sample, the longer the period of observation, the younger the women must be at marriage to have been 44 years of age or younger when she was interviewed. Estimates toward the later durations are therefore biased toward the experiences of younger women at marriage. Because younger age at marriage is associated with a higher probability of disruption, this means that estimates toward the later durations may be overestimates of the probability of disruption. To avoid awkwardness in describing results affected by this limitation, tables and graphs in this report are truncated as necessary. The events examined in this report include the first marriage, the transition from first cohabitation to marriage, first cohabitation disruption, first marriage dissolution, postmarital cohabitation, the transition from separation to divorce, second marriage, and second-marriage dissolution. The higher the average age at the event, the more truncation is necessary to avoid this potential bias. In the future, the NSFG could address this issue by interviewing women up to 54 or 59 years of age.

The probability of divorce itself is not always the best measure of marital instability. While 26.5 percent of women have divorced at the end of 10 years of first marriage, 33 percent of all first

marriages have disrupted because of either separation or divorce at the end of 10 years (NSFG Cycle 5, results not shown). Subgroup comparisons of the probability of divorce are not appropriate for subgroups that differ in the probability that separation will lead to divorce (48). For example, research has shown that the marriages of black women are more likely to end in separation than the marriages of white women, and that separated black couples are less likely to make the transition to divorce than separated white couples (23,43). A comparison of the probability of divorce alone therefore obscures some of the difference between these two groups in the probability that a marriage will dissolve. For this reason, in this report, marital disruption is defined as either separation or divorce, and a second analysis examines the probability that separated women will divorce.

Appendix II presents an example life table for the duration of first marriage and describes in detail each part of the life table and its role in the generation of survival statistics. In the following analysis, for the sake of brevity, only the cumulative proportion dissolved at the beginning of selected intervals is presented and compared across subgroups. (The intervals that have been selected are consistent across outcomes: after 1 year, after 3 years, after 5 years, after 10 years, after 15 years.) The cumulative proportion dissolved after a specified period is a more stable estimate than the estimates of individual probabilities of dissolution within each period (23). Although this explanation and the example life table in the appendix focus on marital duration as the dependent variable of interest, the methodology is easily adapted to examine other cohabitation and marital outcomes.

The analyses of the interval until first marriage and of first marriage stability are the only analyses in this report in which there were sufficient numbers of non-Hispanic Asian women in the NSFG sample to generate reliable estimates. In all other analyses in this report, non-Hispanic Asian women are included in analysis of the full sample but are not analyzed separately. (See Technical Notes.) Non-Hispanic American Indian women are included in analysis of the full sample, but there were not sufficient numbers of non-Hispanic American Indian women in the sample to produce reliable estimates separately.

Estimates are presented separately for non-Hispanic white women, non-Hispanic black women, and Hispanic women. Analyses by other characteristics are presented separately for non-Hispanic white women, and non-Hispanic black women, although in some cases the number of non-Hispanic black women in the sample was not large enough to produce reliable estimates by other covariates. There were enough Hispanic women in the sample to present analysis by other characteristics separately for Hispanic women for only two outcomes: the interval until first marriage and the stability of first marriage. For convenience in writing, in the text of this report, non-Hispanic white women are often referred to as "white" and non-Hispanic black women are often referred to as "black." The full labels are always used in the tables and graphs. The statistics in this report were computed using the LIFETEST procedure in Version 8 of PC-SAS (49). The software package SUDAAN, Version 7.5.6 was used to compute the standard errors of the statistics (50). The point estimates derived in SAS and SUDAAN are identical, but the standard errors computed in SUDAAN correct for the complex survey design of the NSFG Cycle 5.

The statistical significance of differences in the probabilities examined in this report is assessed by comparing the boundaries of confidence intervals around each estimate (see the Technical Notes for further details). Differences presented in the text are statistically significant at the 5-percent level, indicating that if the difference were merely the result of random chance and did not reflect a true difference in the general population, the difference would only be observed in less than 5 percent of all possible samples. In general, results are described at specific points in time, for example, the probability of marital disruption after 5 years of marriage, or after 10 years of marriage. Differences that are described in the text as statistically significant at certain durations of marriage may not be statistically significant at other durations of marriage. Differences that are not discussed in the text are not necessarily statistically insignificant. See the Technical Notes for details on assessing the statistical significance of any difference not noted in the text.

Analyses of data by women's educational attainment are limited to women 20 years of age and over at interview because below age 20, education is largely a function of age and is often incomplete.

Community Distributions by Race/Ethnicity

As will be shown, the race/ethnicity differences in marital and cohabitational stability found in this report are substantial, and the trend analysis suggests that the differences are increasing over time, such that marital instability has leveled off for non-Hispanic white women but continues to increase for non-Hispanic black women. In the analyses of marital and cohabitational outcomes, the consistent finding is that less affluent communities as indicated by lower median family income and percent college educated and higher unemployment, poverty, and welfare are associated with lower marital and cohabitational stability. An examination of community distributions by race/ethnicity may suggest avenues for further exploration of the race differences in marital and cohabitational stability.

Table A shows the percentage distributions of community characteristics for all women and separately for Hispanic, white, and black women. The community characteristics are classified into three categories: the top 25 percent, the middle 50 percent, and the bottom 25 percent. The percentages in the "Total" column do not always equal 25, 50, and 25, because the value at the quartile does not always split the sample up into exact quartiles. For example, if the 25th percentile value of median family

Table A. Number of women 15–44 years of age (in thousands) and percent distribution, by race/ethnicity and contextual variables: United States, 1995

Contextual variable	Number (1,000s)[1]	Race/ethnicity		
		Total	Hispanic	Non-Hispanic white	Non-Hispanic black
Male unemployment					
Bottom 25 percent	18,505	30.7	15.8	35.7	15.5
Middle 50 percent	28,825	47.9	45.7	50.9	35.5
Top 25 percent	12,870	21.4	38.5	13.4	49.0
Median family income					
Bottom 25 percent	15,767	26.2	39.9	19.8	51.4
Middle 50 percent	30,452	50.6	44.4	54.2	37.8
Top 25 percent	13,981	23.2	15.7	26.0	10.8
Percent below poverty					
Bottom 25 percent	14,465	24.0	13.0	28.1	9.1
Middle 50 percent	30,322	50.4	43.4	54.6	34.3
Top 25 percent	15,414	25.6	43.6	17.3	56.6
Percent receiving welfare					
Bottom 25 percent	15,695	26.1	15.2	30.4	11.5
Middle 50 percent	30,059	49.9	38.7	54.8	33.9
Top 25 percent	14,447	24.0	46.1	14.8	54.6
Percent of adults college-educated					
Bottom 25 percent	16,781	27.9	38.9	23.0	48.8
Middle 50 percent	29,711	49.4	46.7	51.6	39.5
Top 25 percent	13,708	22.8	14.5	25.5	11.7
Crime rate					
Bottom 25 percent	14,591	25.0	7.1	30.9	12.3
Middle 50 percent	29,277	50.2	53.2	50.3	45.6
Top 25 percent	14,469	24.8	39.6	18.8	42.1
Percent of women never-married					
Bottom 25 percent	16,038	26.6	14.4	32.6	8.3
Middle 50 percent	30,221	50.2	50.8	52.8	36.7
Top 25 percent	13,942	23.2	34.8	14.7	55.1
Metropolitan status					
Central city	18,550	30.8	51.0	22.8	55.2
Other SMSA[2]	29,303	48.7	41.3	52.9	31.7
Not SMSA[2]	12,347	20.5	7.7	24.3	13.2

[1]The weighted number of women is an estimate of the total population size and does not reflect sample size.
[2]SMSA is standard metropolitan statistical area.

income is $10,000, but there are a large number of cases with values of $10,000, there may not be a clear distinction at exactly the 25th percentile.

Table A shows that non-Hispanic white women are disproportionately present in affluent neighborhoods and that non-Hispanic black and Hispanic women are disproportionately present in less-affluent neighborhoods. Roughly 31 percent of all women live in low-unemployment communities and 21 percent live in high-unemployment communities, but among white women, almost 36 percent live in low-unemployment communities and only 13 percent live in high-unemployment communities, compared with 16 percent of black women in low-unemployment areas and almost one-half (49 percent) of black women in high-unemployment areas (table A). Only 9 percent of black women live in low-poverty communities and 57 percent live in high-poverty areas, compared with 28 percent of white women in low-poverty areas and 17 percent of white women in high-poverty areas. The distribution of Hispanic women falls between that of white and black women, but Hispanic women are also disproportionately present in less affluent areas (table A).

It will be shown that median family income in the community is associated with the probability of first marriage disruption, such that marriages are more likely to fail if the woman lives in a low-income community. This relationship is similar among white and black women. Because black women tend to live in communities with low median family income and communities with low income are associated with a larger probability of marital disruption, black women have a higher chance of

Table B. Number of women 15–44 years of age (in thousands) and percent distribution, by past cohabitation and marital status and by age at interview and race/ethnicity: United States, 1995

Age at interview and race/ethnicity	Number (1,000s)[1]	Total	Past cohabitation and marital status			
			Never married		Ever married	
			Never cohabited	Ever cohabited	Never cohabited	Ever cohabited
Total	60,201	100.0	27.5	10.2	31.4	30.9
Age at interview						
15–19	8,961	100.0	88.6	7.0	2.6	1.9
20–24	9,041	100.0	45.5	20.2	16.2	18.1
25–29	9,693	100.0	20.3	15.4	30.4	33.9
30–34	11,065	100.0	10.8	9.3	37.8	42.1
35–39	11,211	100.0	7.1	6.4	42.9	43.6
40–44	10,230	100.0	5.5	4.1	51.5	38.9
Race/ethnicity						
Hispanic	6,702	100.0	28.2	10.4	35.1	26.3
White non-Hispanic	42,522	100.0	24.7	8.9	32.7	33.7
Black non-Hispanic	8,210	100.0	39.7	17.3	20.2	22.9
Other non-Hispanic[2]	2,767	100.0	33.2	8.3	35.1	23.4

[1]The weighted number of women is an estimate of the total population size and does not reflect sample size.
[2]Includes Asian and Pacific Islander women and American Indian women, not shown separately.

marital dissolution than white women, who are less likely to live in communities with low income. However, within low-income communities, black women still have a greater probability of marital disruption than white women in low-income communities, so some of the race difference remains unexplained.

To fully explore the effects of individual and community characteristics requires multilevel modeling, which is beyond the scope of this report. Associations between individual outcomes and community characteristics could be influenced by unobserved factors. The analyses by community characteristics are not meant to represent full explanations of the outcomes studied in this report. Researchers are encouraged to use these results as starting points to follow up with more extensive analysis.

Results

Cohabitation and Marital Status

Table B shows the distribution of women 15–44 years of age in 1995 by past cohabitation and marital status, age at interview, and race/ethnicity. Past cohabitation and marital status is classified in table B as never married or ever married, with each group further split into two subgroups separating the never cohabited from the ever cohabited. These four subgroups are mutually exclusive and exhaustive, summing to 100 percent.

Almost 28 percent of women 15–44 years of age have never married nor cohabited (table B). This percentage is considerably larger for young women and decreases as age increases. About 62 percent of women have ever been married, one-half of whom have ever cohabited and one-half of whom have never cohabited. The remaining 10 percent have cohabited, but never married. Non-Hispanic white women are more likely to have experienced both cohabitation and marriage, while non-Hispanic black women are more likely to have experienced neither cohabitation nor marriage (table B).

Table C shows the distribution of women 15–44 years of age in 1995, by current cohabitation and marital status at interview, age at interview, and race/ethnicity. Current cohabitation and marital status is classified as currently cohabiting or not currently cohabiting. The category not currently cohabiting is further split into the never married, formerly married, or currently married. These four subgroups are mutually exclusive and exhaustive, summing to 100 percent. Although current cohabitors could be never married or formerly married, they would not be included in the never married or formerly married categories because those groups are restricted to respondents not cohabiting at interview in order to focus on the proportions of women currently in a marriage or cohabitation.

Roughly 50 percent of women 15–44 years of age are currently married and 7 percent of women 15–44 years of age are currently cohabiting (table C). One third of women 15–44 years of age are not cohabiting and have never married. The remaining 10 percent are not cohabiting and are formerly married (separated, divorced, or widowed). The percent currently cohabiting is larger for young adults in their twenties and then decreases as age increases. The most striking differences by race/ethnicity are the higher percent not cohabiting and never married and the lower percent currently married among non-Hispanic black women. In the remaining text of this report, non-Hispanic white women are often referred to as "white" and non-Hispanic black women are often referred to as "black." The full labels are always used in the tables and graphs.

Table C. Number of women 15–44 years of age (in thousands) and percent distribution, by current cohabitation and marital status and by age at interview and race/ethnicity: United States, 1995

Age at interview and race/ethnicity	Number (1,000s)[1]	Total	Current cohabitation and marital status			
				Not cohabiting		
			Currently cohabiting	Never married	Formerly married	Currently married
Total	60,201	100.0	7.0	33.4	10.3	49.3
Age at interview						
15–19	8,961	100.0	4.1	91.5	0.6	3.8
20–24	9,041	100.0	11.2	56.1	5.5	27.2
25–29	9,693	100.0	9.8	28.9	8.8	52.5
30–34	11,065	100.0	7.5	16.2	11.6	64.7
35–39	11,211	100.0	5.3	11.9	15.0	67.9
40–44	10,230	100.0	4.4	8.8	18.1	68.6
Race/ethnicity						
Hispanic	6,702	100.0	8.2	32.8	11.6	47.4
White non-Hispanic	42,522	100.0	7.0	29.4	9.3	54.3
Black non-Hispanic	8,210	100.0	6.9	52.5	15.5	25.2
Other non-Hispanic[2]	2,767	100.0	4.6	39.1	7.6	48.8

[1]The weighted number of women is an estimate of the total population size and does not reflect sample size.
[2]Includes Asian and Pacific Islander women and American Indian women, not shown separately.

The Probability of First Marriage

Tables 1 and 2 show the probability that a woman marries for the first time by characteristics of the woman and her community. Tables 3 and 4 show these estimates for Hispanic women, tables 5 and 6 show the estimates for non-Hispanic white women, and tables 7 and 8 show the estimates for non-Hispanic black women. These tables show the probabilities of marriage at specific durations since age 15, the starting point for this analysis. The starting point is actually the month of the 15th birthday, so a 3-year interval ends in the month just before the 18th birthday and a 5-year interval ends in the month just before the 20th birthday. A recent census report estimated that 90 percent of women will marry at some time in their lives (51); because most women eventually marry, the tables presented here basically show differences in the timing of first marriage by characteristics of the woman and her community. A particular variable may show a significant difference in the proportion of women married by age 18,

Child Custody Policies and

Divorce Rates in the United States

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11th Annual Conference of the Children's Rights Council October 23-26, 1997. Washington, D.C.

For more research on the relationship between joint custody and divorce rates, see this page.
See also: Joint custody research

Abstract

This paper compares divorce rate trends in the United States in states that encourage joint physical custody (shared parenting) with those in states that favor sole custody. States with high levels of joint physical custody awards (over 30%) in 1989 and 1990 have shown significantly greater declines in divorce rates in following years through 1995, compared with other states. Divorce rates declined nearly four times faster in high joint custody states, compared with states where joint physical custody is rare. As a result, the states with high levels of joint custody now have significantly lower divorce rates on average than other states. States that favored sole custody also had more divorces involving children. These findings indicate that public policies promoting sole custody may be contributing to the high divorce rate. Both social and economic factors are considered to explain these results.

Introduction

Empirical evidence shows that children raised by a divorced single parent are significantly more likely than average to have problems in school, run away from home, develop drug dependency, or experience other serious problems (e.g., Amato and Keith, 1991; Guidubaldi, Cleminshaw, Perry, and McLoughlin,1983; Hetherington and Cox, 1982). Although many single parent families are created as a result of unwed motherhood, far more are the result of divorce. Of 18.6 million children in the United States living with only one parent, approximately two thirds are with divorced or separated parents (Census, 1994). This paper investigates the relationship between child custody policies and changes in the U.S. divorce rate, using data from a 19 state sample collected by the National Center for Health Statistics of the Centers for Disease Control.

Custody Policies

States differ widely in their policies toward joint custody. Many states routinely grant joint legal custody, which gives the non-residential parent the right to participate in major decisions about the children's upbringing and to view certain records. Joint legal custody does not affect the child's living arrangements. Often it is granted with the traditional residence arrangement, in which the child lives with one parent but visits the other parent four days per month.

s commonly, joint physical custody is awarded. With joint physical custody (also called shared
enting), the child lives with both parents, often on an alternating week basis. Joint physical custody is usually defined as a schedule where the child has at least a 30/70 time share between parents, although 50/50 arrangements are a common form of shared parenting (Ricci, 1981). Some form of joint custody is a preference or presumption in a few states, while in some other states with no preferred custody option, judges have favorable attitudes toward joint custody and frequently

grant it. For the 19 states in the NCHS sample, the average rate of joint physical custody awards in 1990 was 15.7%, and in two states joint physical custody was awarded in nearly half of the cases.

State policies on joint custody have changed significantly in the past 25 years. Because of maternal preference policies, joint custody was unusual before 1970, although divorced families in times past sometimes worked out arrangements that were equivalent to modern joint custody (Ricci, 1981). For example, the Maryland Court of Appeals considered a case in 1934 in which the division of time between parents was equivalent to joint physical custody (McCann v. McCann), although the term joint custody had not yet been invented. As maternal preference laws were found to violate the 14th Amendment guarantee of equal protection under the law in the 1960s and 1970s (Roth, 1976), joint custody began to increase. Although much has been written about links between "no-fault" divorce laws and the divorce rate, there has been little discussion of the effect of child custody policies on the divorce rate.

Custody Policies and the Divorce Rate

It might be argued that joint custody could encourage divorce, by making divorce "easier." On the other hand, widespread acceptance of joint physical custody might be expected to reduce the divorce rate, because joint custody makes it difficult for an angry parent to hurt the other by taking away the children, or to relocate and thereby eliminate interaction with the other parent. In addition, an economic argument has been advanced that high levels of child support associated with sole custody may encourage divorce, because custody of children represents an asset for the custodial parent to the extent that child support payments exceed the cost of raising a child (Muhtaseb, 1995). Because joint physical custody results in a more equal division of parenting time, child support payments may be lower, although there are still payments unless both parents have the same income. States that more frequently award joint physical custody may thus see a decline in the divorce rate. To date, no study has provided empirical evidence to support either hypothesis about the effect of joint custody policies on the divorce rate.

Data

State divorce rates and other vital statistics are maintained by the National Center for Health Statistics (NCHS), a division of the Centers for Disease Control, U.S. Department of Health and Human Services. The divorce rate measure used is the number of divorces per thousand population. A 1995 NCHS report (Clarke, 1995) gives data on physical custody awards for 19 participating states for the years 1989 and 1990. This NCHS report is the first of its kind to report figures for physical custody of children. Values given are percentages of sole custody father, sole custody mother, and joint custody awards. Figures for 1989 and 1990 are given, separated by a "/". In some cases the total may be slightly less than 100% because awards to persons other than mother or father (generally from 0 to 2% in the NCHS report) are not included in Table 1. More recent data are not yet available. Table 1 shows the physical custody awards for these states. The definition of joint physical custody used in the NCHS study is a minimum of 30% time share with each parent (Clarke, 1996). Figures for 1989 and 1990 are similar, although the percentages for joint custody are slightly higher in 1990 for those states reporting both years. For five states, 1989 figures were not available; these are indicated as "NA". States were divided into categories of High (above 30%), Medium (10% to 30%), or Low (below 10%) levels of joint physical custody awards, as shown in Table 1.

State	Father	Mother	Joint	Category
Montana	8.1/8.4	47.8/46.4	43.3/44.0	High
Kansas	7.8/6.8	50.1/47.2	39.5/43.6	
Connecticut	5.3/5.3	58.7/58.1	35.8/36.4	
Idaho	9.8/10.4	57.9/55.3	31.9/33.2	
Rhode Island	NA/5.4	NA/62.2	NA/31.7	
Alaska	NA/14.2	NA/63.1	NA/19.5	Medium
Vermont	NA/10.6	NA/71.4	NA/17.1	

Illinois	8.7/9.2	77.4/75.4	13.7/15.1
Wyoming	11.0/9.5	73.0/74.4	14.1/15.1
Missouri	10.4/11.0	74.4/73.1	14.0/14.8
Oregon	10.7/12.6	74.1/71.7	14.9/14.0
Michigan	9.5/11.2	76.4/73.9	12.5/14.2
'rginia	NA/11.6	NA/70.9	NA/13.8
Pennsylvania	10.5/10.0	78.6/76.7	9.4/10.1 Low
Utah	10.5/9.7	79.3/81.1	10.1/9.0
Tennessee	11.1/11.3	78.9/78.9	8.1/8.6
Alabama	9.7/10.7	79.5/80.2	9.3/8.6
New Hampshire	12.2/11.0	79.9/80.4	6.6/7.1
Nebraska	NA/12.2	NA/81.3	NA/4.1

Table 1. Physical Custody Awarded (percent), 1989/1990
Source: Monthly Vital Statistics Report, Vol. 43, No. 9 (March 22, 1995), National Center for Health Statistics.

Findings and Discussion

Divorce rates for 1989, 1990 and 1991 were compared with 1993, 1994 and 1995 levels, as shown in Table 2. Comparisons between basal values of 1989/1990/1991 and values for 1993/1994/1995 are used rather than absolute values in order to factor out differences that may be unrelated to custody policies. For example, states differ in their ethnic, religious, and racial compositions, factors that can affect the divorce rate. The effect of custody policies can be more precisely isolated by using differences across time, just as the effect of a medication is isolated by comparing before and after treatment values for subjects whose initial (and final) values for blood pressure, heart rate, or other measures may be significantly different. Initial values and values four years later for the state groups are shown in Table 3. Table 3 also shows 1980 divorce rate averages for the three groups. Joint custody had begun to emerge as a custody option in 1980, although its adoption into state policies occurred at different points. Rate changes between 1980 and 1990, therefore, are likely to contain the effects of policies regarding joint custody. Note that the High and Medium joint custody groups had very similar divorce rate declines between 1980 and 1994 (by approximately 1.1 and 1.2 per thousand respectively), while the states with low levels of joint custody had a decline of only 0.4 per thousand between 1980 and 1994.

	-- Divorce Rates by Year-----						Four Year Differences			Average
State	1989	1990	1991	1993	1994	1995	93-89	94-90	95-91	Change
Montana	5.1	5.1	5.4	5.1	4.9	4.8	0	-.2	-.6	
Kansas	5.0	5.1	5.5	4.8	4.7	4.2	-.2	-.4	-1.3	
Connecticut	3.7	3.5	3.5	3.1	2.8	2.9	-.6	-.7	-.6	
Idaho	6.3	6.4	6.3	6.3	6.2	5.8	0	-.2	-.5	
Rhode Island	3.6	3.7	3.3	3.4	3.2	3.7	-.2	-.5	+.4	-.37
Alaska	6.3	5.7	6.4	5.3	5.5	5.0	-1.0	-.2	-1.4	
Vermont	4.5	4.4	4.6	4.8	4.0	4.8	+.3	-.4	+.2	
Illinois	4.0	4.0	4.0	3.7	3.7	3.3	-.3	-.3	-.7	
Wyoming	6.6	6.9	7.0	6.5	6.5	6.7	-.1	-.4	-.3	
Missouri	4.9	5.0	5.1	5.1	5.0	5.0	+.2	0	-.1	
Oregon	5.4	5.5	5.2	5.3	5.3	4.8	-.1	-.2	-.4	
Michigan	4.4	4.4	4.3	4.1	4.1	4.2	-.3	-.3	-.1	
Virginia	4.2	4.4	4.5	4.5	4.6	4.4	+.3	+.2	-.1	-.23
Pennsylvania	3.2	3.4	3.3	3.3	3.3	3.3	+.1	-.1	0	
Utah	4.8	5.2	4.8	4.8	4.7	4.6	0	-.5	-.2	
Tennessee	6.6	6.6	6.5	6.5	6.6	6.3	-.1	0	-.2	
Alabama	6.2	6.3	6.5	6.5	6.2	6.1	+.3	-.1	-.4	
New Hampshire	4.5	4.5	4.3	4.5	4.4	4.2	0	-.1	-.1	
raska	4.0	4.1	4.0	3.9	4.0	3.8	-.1	-.1	-.2	-.10

Table 2. Divorce Rates and Four-year Difference in Rates
Sources: Monthly Vital Statistics Report, Vol. 43, No. 13 (October 23, 1995), National Center for Health Statistics.
Statistical Abstract of the United States, 1993.

As can be seen from Table 2 and Table 3, the states with high levels of joint custody had significantly lower divorce rates four years later. States with higher levels of joint custody had an average four-year decline in the divorce rate approximately double that for states with medium levels of joint custody. On a percentage basis, between 1989 and 1994 the rate in the High joint custody group declined by 8%, in the Medium group by 4%, and in the Low group by less than 1%.

Joint Custody Level	Year 1980	1989	1990	1993	1994
High	5.42	4.74	4.76	4.54	4.36
Medium	6.06	5.04	5.04	4.94	4.84
Low	5.25	4.88	5.02	4.92	4.87

Table 3. Changes in Divorce Rates Over Time

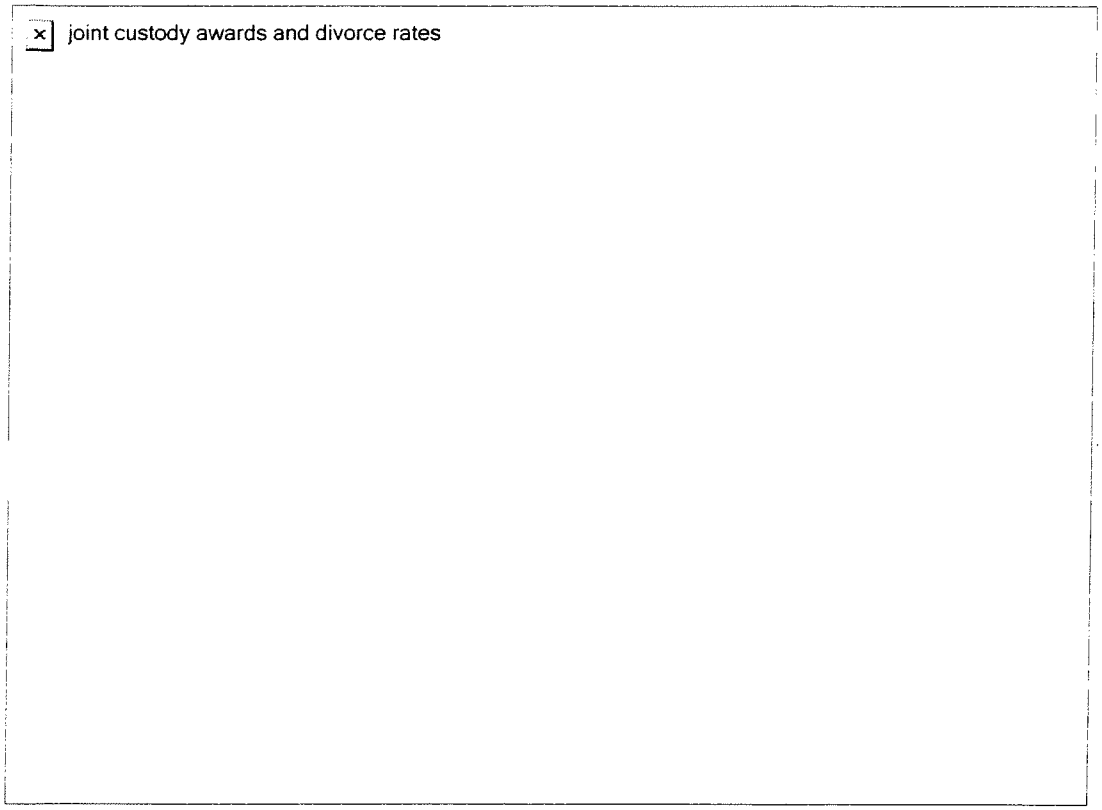
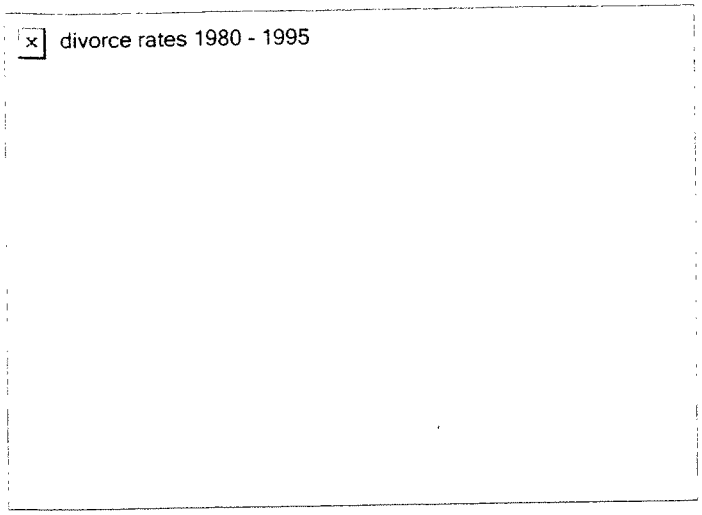


Figure 1 shows joint custody awards and divorce rate changes for the 19-state NCHS sample. States are ordered by level of joint custody awards in 1990. As joint custody awards increase, states in general have greater declines in divorce rates. Figure 2 summarizes the changes in divorce rates for states in the three joint custody categories. Statistical analysis shows that the correlation between joint physical custody and reduced divorce is almost certainly not due to chance fluctuation. The statistical measure used is a correlation of the average of joint custody awards per state in 1989 and 1990 with the average decline in divorce rate from 1989 through 1991 to 1993 through 1995 (i.e., difference between the average of 1993, 1994, and 1995 rates and the average of 1989, 1990, and 1991 rates.) This is the average of the "Joint" column of Table 1 correlated with the difference between the average of 1993 to 1995 rates and 1989 to 1991 rates in the "Divorce Rates by Year" column of Table 2. There is less than a five percent probability that this correlation is due to chance (correlation coefficient $r = .47$, $p < .05$). (Note: Wisconsin reported numbers in 1989 but not in 1990, so it was not included in this analysis. However, separate calculations show that inclusion of the Wisconsin data does not affect the statistical significance of the results.)



One possible explanation to consider for the difference in divorce rates between high and low joint custody states is an effect resulting from changes in marriage rates. If marriage rates per thousand population increase, then divorce rates per thousand population in following years can increase if marriages fail at the same rate. Similarly, divorce rates can decrease during a particular period if marriage rates decreased in previous years, because fewer marriages were created. Thus it is important to look at whether the greater decline in divorce rates in high joint custody states during the early 1990s results from a decrease in marriage rates during the early 1980s. Table 4 shows the change in marriage rates between 1980 and 1985, a decade before the period under study.

		- Marriage Rates		Change Group	Change
State	1980	1985	per 1000	per 1000	percent
Montana	10.6	8.7	-1.9		
Kansas	10.5	9.5	-1.0		
[illegible]necticut	8.4	8.6	+ .2		
[illegible]aho	14.2	12.2	-2.0		
Rhode Island	7.9	8.3	+ .4	-.86	-2.7%
Alaska	13.3	11.8	-1.5		
Vermont	10.2	10.4	+ .2		
Illinois	9.6	8.5	-1.1		
Wyoming	14.6	10.6	-4.0		
Missouri	11.1	9.8	-1.3		
Oregon	8.7	8.3	- .4		
Michigan	9.4	8.7	- .7		
Virginia	11.3	11.7	+ .4	-1.05	-9.6%
Pennsylvania	7.9	7.5	- .4		
Utah	11.6	10.6	-1.0		
Tennessee	12.9	11.5	-1.4		
Alabama	12.6	11.5	-1.1		
New Hampshire	10.0	11.4	+1.4		
Nebraska	9.1	7.9	-1.2	-1.21	-6.3%

Table 4. Change in Marriage Rates
Source: Statistical Abstract of the United States.

If the greater decline in divorce rates for High joint custody states results from declining marriage rates in previous years, then we would expect marriage rates for these states to show larger decreases in the early 1980s than the Low joint custody states. As can be seen from Table 4, the reverse is true. The low joint custody states actually had greater declines in marriage rates during the early 1980s. If marriages continued to fail at the same rate during the decade, then these states should also show [illegible]ater declines in divorce rates during the early 1990s. The fact that they did not suggests that other [illegible]tors may be at work. It is not reasonable to conclude that the decrease in divorce rates associated with joint custody is simply a result of declines in marriage rates. A second explanation proposed here considers both social and economic factors.

Before the 1960s, social pressures and legal requirements made divorce relatively uncommon in the

U.S. Divorce typically required grounds severe enough that a reasonable person could not expect the marriage to continue: adultery, desertion, abuse, insanity or imprisonment of a spouse. With a few exceptions, states adopted unilateral "no-fault'" divorce laws in the 1960s and 1970s, which allowed a spouse to abandon a marriage without traditional grounds. Divorce was actually encouraged by ıe as an antidote to boredom, or for other reasons that might have been considered frivolous a ..neration before. About 80% of U.S. divorces today result from the unilateral decision of one spouse, rather than the joint decision of both (Gallagher, 1996), with the spouse who files for divorce first often having an advantage.

If one investigates the simple question, "who initiates divorce," we find from the Monthly Vital Statistics Report May 21, 1991 (NCHS, 1991), that from 1975 to 1988, in families with children present, wives file for divorce in approximately 2/3 of the cases each year. In 1975, 71.4% of the cases were filed by women, and in 1988, 65% were filed by women. While these statistics alone do not compel a conclusion that women anticipate advantages to being single, rather than remaining in the marriage, they do raise that reasonable hypothesis. If women can anticipate a clear gender bias in the courts regarding custody, they can expect to be the primary residential parent for the children. If they can anticipate enforcement of financial child support by the courts, they can expect a high probability of support monies without the need to account for their expenditures. Clearly they can also anticipate maintaining the marital residence, receiving half of all marital property, and gaining total freedom to establish new social relationships. Weighing these gains against the alternative of remaining in an unhappy marriage may result in a seductive enticement to obtain a divorce, rather than to resolve problems and remain married.

States that favor sole custody in divorce may thus expect to see more divorce than states that encourage joint custody. On a practical level, joint physical custody makes it less likely that a parent can move to another city to eliminate interaction with the other parent. Because both parents provide for the child directly, child support payments may be somewhat lower with joint custody, reducing ıncial motives for divorce. Perhaps most significant, joint custody also removes the capacity for ..e spouse to hurt the other by denying participation in raising the children. The correlation between joint custody and reduced divorce may have a simple explanation. If a parent considering a divorce is told by an attorney that a judge will probably not permit him or her to relocate with the children, and that the other parent will continue to be involved, he or she may decide that it is easier to work out problems and remain married.

State	1989	1990	1989 Average	1990 Average
Montana	55.1	55.3	54.9	54.4
Kansas	55.5	55.2		
Connecticut	49.1	49.5		
Idaho	55.4	54.8		
Rhode Island	59.5	57.3		
Alaska	52.4	49.1	54.4	53.3
Vermont	60.2	57.4		
Illinois	55.6	55.5		
Wyoming	58.0	56.8		
Missouri	52.0	54.2		
Oregon	52.4	51.8		
Michigan	55.9	53.7		
Virginia	49.3	48.7		
Pennsylvania	57.3	56.8	57.0	57.3
Utah	62.2	63.2		
Tennessee	49.9	49.9		
bama	51.8	51.1		
..ew Hampshire	57.7	59.4		
Nebraska	62.9	63.6		

Table 5. Percentage of Divorces Involving Children, 1989/1990
Source: Monthly Vital Statistics Report, Vol. 43, No. 9 (March 22, 1995), National Center for Health Statistics.

Put simply, when divorce becomes a less attractive alternative to marriage, we should expect less divorce. As can be seen from the findings, this appears to be happening in states with higher levels of joint custody. If sole custody reduces incentives to continue marriage, then we should also expect states that favor sole custody to have more divorces involving children. As can be seen from Table 5, the low joint/high sole custody states also had more divorces involving children, although the ference is not statistically significant.

Summary and Conclusions

The evidence reported in this paper indicates that widespread acceptance of joint physical custody will not increase the divorce rate, and may in fact reduce divorce. States whose family law policies - either by statute or through judicial practice - encourage joint custody have shown a much greater decline in their divorce rates than those that favor sole custody.

Both social and economic factors may explain the differences between divorce rates. Sole custody allows one spouse to relocate easily and to hurt the other by taking away the children. Potentially higher child support payments with sole custody may provide an economic motive for divorce as well. With joint physical custody, both social and economic motives for divorce are reduced, so parents considering divorce may simply decide it is easier to remain married. States whose policies result in more joint custody and less sole custody should thus see a reduction in divorce rates. The findings reported in this paper indicate that this is in fact happening.

Acknowledgements

..e are very grateful to Sally C. Clarke for discussions on the NCHS data.

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Historical Poverty Tables

Table 13. Number of Families Below the Poverty Level and Poverty Rate: 1959 to 2005
(Numbers in thousands. Families as of March of the following year)

Year	Number of poor families	Poverty rate for families	Number of poor families with female (NSP) householder	Poverty rate for families with female householder
2005.....	7,657	9.9	4,044	28.7
2004 14/..	7,835	10.2	3,962	28.3
2003.....	7,607	10.0	3,856	28.0
2002.....	7,229	9.6	3,613	26.5
2001.....	6,813	9.2	3,470	26.4
2000 12/..	6,400	8.7	3,278	25.4
1999 11/..	6,792	9.3	3,559	27.8
1998.....	7,186	10.0	3,831	29.9
1997.....	7,324	10.3	3,995	31.6
1996.....	7,708	11.0	4,167	32.6
1995.....	7,532	10.8	4,057	32.4
1994.....	8,053	11.6	4,232	34.6
1993 10/..	8,393	12.3	4,424	35.6
1992 9/...	8,144	11.9	4,275	35.4
1991 8/...	7,712	11.5	4,161	35.6
1990.....	7,098	10.7	3,768	33.4
1989.....	6,784	10.3	3,504	32.2
1988.....	6,874	10.4	3,642	33.4
1987 7/...	7,005	10.7	3,654	34.2
1986.....	7,023	10.9	3,613	34.6
1985.....	7,223	11.4	3,474	34.0
1984.....	7,277	11.6	3,498	34.5
1983 6/...	7,647	12.3	3,564	36.0
1982.....	7,512	12.2	3,434	36.3
1981 5/...	6,851	11.2	3,252	34.6
1980.....	6,217	10.3	2,972	32.7
1979 4/...	5,461	9.2	2,645	30.4
1978.....	5,280	9.1	2,654	31.4
1977.....	5,311	9.3	2,610	31.7
1976.....	5,311	9.4	2,543	33.0
1975.....	5,450	9.7	2,430	32.5
1974 3/...	4,922	8.8	2,324	32.1
1973.....	4,828	8.8	2,193	32.2
1972.....	5,075	9.3	2,158	32.7
1971 2/...	5,303	10.0	2,100	33.9
1970.....	5,260	10.1	1,951	32.5
1969.....	5,008	9.7	1,827	32.7

1968.....	5,047	10.0	1,755	32.3
1967 1/...	5,667	11.4	1,774	33.3
1966	5,784	11.8	1,721	33.1
1965	6,721	13.9	1,916	38.4
1964	7,160	15.0	1,822	36.4
1963	7,554	15.9	1,972	40.4
1962	8,077	17.2	2,034	42.9
1961	8,391	18.1	1,954	42.1
1960	8,243	18.1	1,955	42.4
1959	8,320	18.5	1,916	42.6

Table 13. Number of Families Below the Poverty Level and Poverty Rate: 1959 to 2005
(Numbers in thousands. Families as of March of the following year)

Year	Families with female householder as a percent of all families	Poor families with female householder as a percent of all poor families	Nonpoor families with female householder as a percent of all non-poor families
2005.....	18.2	52.8	14.4
2004 14/..	18.2	50.6	14.5
2003.....	18.1	50.7	14.5
2002.....	18.0	50.0	14.6
2001.....	17.7	50.9	14.3
2000 12/..	17.5	51.2	14.3
1999 11/..	17.5	52.4	13.9
1998.....	17.9	53.3	13.9
1997.....	17.8	54.6	13.6
1996.....	18.2	54.1	13.8
1995.....	18.0	53.9	13.6
1994.....	17.6	52.6	13.0
1993 10/..	18.1	52.7	13.3
1992 9/...	17.7	52.5	13.0
1991 8/...	17.4	54.0	12.7
1990.....	17.0	53.1	12.7
1989.....	16.5	51.7	12.5
1988.....	16.5	53.0	12.3
1987 7/...	16.4	52.2	12.1
1986.....	16.2	51.4	11.9
1985.....	16.1	48.1	12.0
1984.....	16.2	48.1	12.0
1983 6/...	16.0	46.6	11.6
1982.....	15.4	45.7	11.2
1981 5/...	15.4	47.5	11.4
1980.....	15.1	47.8	11.3
1979 4/...	14.6	48.4	11.2
1978.....	14.6	50.3	11.1
1977.....	14.4	49.1	10.8
1976.....	13.6	47.9	10.1
1975.....	13.3	44.6	9.9

1974 3/...	13.0	47.2	9.7
1973.....	12.4	45.4	9.2
1972.....	12.2	42.5	9.0
1971 2/...	11.6	39.6	8.5
1970.....	11.5	37.1	8.6
1969.....	10.8	36.5	8.2
1968.....	10.7	34.8	8.0
1967 1/...	10.6	31.3	8.0
1966	10.5	29.8	7.9
1965	10.3	28.5	7.3
1964	10.4	25.4	7.8
1963	10.2	26.1	7.2
1962	10.0	25.2	6.8
1961	9.9	23.3	7.0
1960	10.1	23.7	7.0
1959	9.8	23.0	6.8

Footnotes

Source: U.S. Bureau of the Census, Current Population Survey, Annual Social and Economic Supplements.

Poverty and Health Statistics Branch/HHES Division
U. S. Bureau of the Census
U. S. Department of Commerce
Washington, DC 20233-8500
(301) 763-3242

What Detroit News Readers Say About Joint Custody

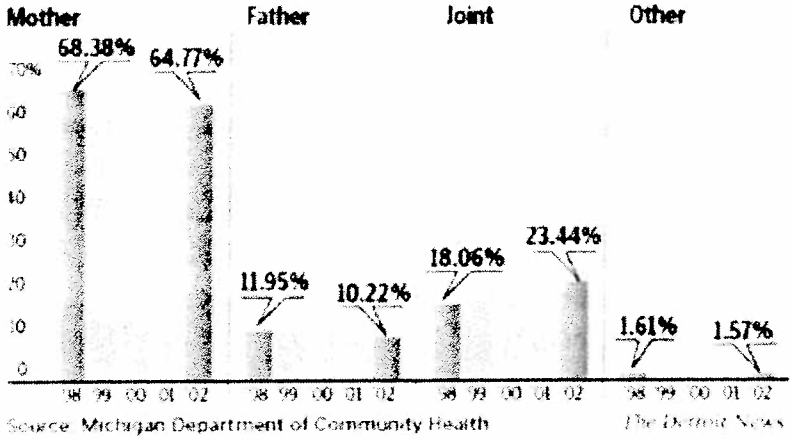
The Detroit News October 31, 2004
Detroit News Survey

For divorcing parents, should Michigan courts make equally shared custodial responsibility of children the standard?

Yes 86.50%

No 13.50%

Child custody awards in divorce



To see comments to the Detroit News article, click here.
Source: Detroit News October 31, 2004

DOMP Note: Joint awards include joint legal or joint physical custody or both. According to the Michigan Parenting Time Guidelines, this would include every other weekend visitation. Visitation and parenting have very different definitions.

Joint Physical Custody Ballot Petition
Final Results for Fathers & Families

District	Yes	No	Yes/No Total	Blank	Total of all Votes	Yes/No %	Blank %	Yes as % of All Ballots
Total Fathers & Families Votes in Representative Districts	428,648	65,115	493,763	109,513	603,276	**86.81%**	18.15%	71.05%
Total Fathers & Families Votes in Representative & Senate Districts	476,861	72,352	549,213	121,278	670,491	**86.83%**	18.09%	71.12%
Total Berkshire Fatherhood Coalition Votes	68,808	17,595	86,403	13,567	99,970	**79.64%**	13.57%	68.83%
Total Votes in All 37 Districts	545,669	89,947	635,616	134,845	770,461	**85.85%**	17.50%	70.82%

Notes

F&F average victory margin was 87% with Berkshire at 80% for overall margin of 86%.

Blank votes (abstentions) were a small percentage of the total - 17.5% overall - this compares very favorably with general voting patterns.

Fathers & Families Ballot Petition in Rep Districts								
In the Fourth Bristol Rep. District	15,851	2,244	18,095	3,315	21,410	**87.60%**	15.48%	74.04%
In the Fifth Bristol Rep. District	14,240	1,967	16,207	3,761	19,968	**87.86%**	18.84%	71.31%
In the Sixth Essex Rep. District	15,009	2,589	17,598	2,079	19,677	**85.29%**	10.57%	76.28%
In the Seventh Essex Rep. District	13,081	2,547	15,628	2,512	18,140	**83.70%**	13.85%	72.11%
In the Thirteenth Essex Rep. District	16,652	2,801	19,453	2,087	21,540	**85.60%**	9.69%	77.31%
In the Fourteenth Essex Rep. District	11,383	1,554	12,937	2,862	15,799	**87.99%**	18.12%	72.05%
In the Seventeenth Essex Rep. District	13,995	1,835	15,830	2,923	18,753	**88.41%**	15.59%	74.63%
In the First Franklin Rep. District	16,256	3,488	19,744	3,589	23,333	**82.33%**	15.38%	69.67%
In the Second Franklin Rep. District	13,762	2,525	16,287	2,210	18,497	**84.50%**	11.95%	74.40%
In the First Hampden Rep. District	14,674	1,981	16,655	3,306	19,961	**88.11%**	16.56%	73.51%
In the Third Hampden Rep. District	14,531	1,990	16,521	3,650	20,171	**87.95%**	18.10%	72.04%
In the Ninth Hampden Rep. District	8,996	1,195	10,191	4,056	14,247	**88.27%**	28.47%	63.14%
In the Second Hampshire Rep. District	14,630	2,519	17,149	2,905	20,054	**85.31%**	14.49%	72.95%
In the First Middlesex Rep. District	16,225	2,381	18,606	2,582	21,188	**87.20%**	12.19%	76.58%
In the Fourth Middlesex Rep. District	14,082	1,905	15,987	3,208	19,195	**88.08%**	16.71%	73.36%
In the Fifth Middlesex Rep. District	15,029	2,158	17,187	3,776	20,963	**87.44%**	18.01%	71.69%
In the Twentieth Middlesex Rep. District	16,333	2,317	18,650	5,048	23,698	**87.58%**	21.30%	68.92%
In the Twenty-Second Middlesex Rep. District	14,188	1,721	15,909	2,313	18,222	**89.18%**	12.69%	77.86%

In the Twenty-Third Middlesex Rep. District	16,707	3,001	19,708	4,352	24,060	**84.77%**	18.09%	69.44%
In the Thirty-First Middlesex Rep. District	14,251	2,124	16,375	5,713	22,088	**87.03%**	25.86%	64.52%
In the Thirty-Second Middlesex Rep. District	15,317	2,173	17,490	5,684	23,174	**87.58%**	24.53%	66.10%
In the Fifth Norfolk Rep. District	14,008	1,897	15,905	5,316	21,221	**88.07%**	25.05%	66.01%
In the Twelfth Norfolk Rep. District	13,789	1,823	15,612	5,005	20,617	**88.32%**	24.28%	66.88%
In the Fourteenth Norfolk Rep. District	15,753	3,510	19,263	3,422	22,685	**81.78%**	15.08%	69.44%
In the Second Suffolk Rep. District	7,028	999	8,027	4,014	12,041	**87.55%**	33.34%	58.37%
In the Third Suffolk Rep. District	9,098	1,181	10,279	5,380	15,659	**88.51%**	34.36%	58.10%
In the Nineteenth Suffolk Rep. District	8,461	1,274	9,735	5,402	15,137	**86.91%**	35.69%	55.90%
In the Sixth Worcester Rep. District	13,804	1,829	15,633	2,017	17,650	**88.30%**	11.43%	78.21%
In the Eleventh Worcester Rep. District	14,623	2,064	16,687	3,284	19,971	**87.63%**	16.44%	73.22%
In the Twelfth Worcester Rep. District	15,845	2,535	18,380	2,327	20,707	**86.21%**	11.24%	76.52%
In the Seventeenth Worcester Rep. District	11,047	988	12,035	1,415	13,450	**91.79%**	10.52%	82.13%
Fathers & Families Ballot Petition in Senate District								
In the Second Hampden & Hampshire Sen. Dist.	48,213	7,237	55,450	11,765	67,215	**86.95%**	17.50%	71.73%
Berkshire Fatherhood Coalition Ballot Petition in Rep Districts								
In the First Berkshire Rep. District	12,006	2,678	14,684	2,415	17,099	**81.76%**	14.12%	70.21%
In the Second Berkshire Rep. District	15,558	3,697	19,255	2,971	22,226	**80.80%**	13.37%	70.00%
In the Third Berkshire Rep. District	11,215	3,926	15,141	2,359	17,500	**74.07%**	13.48%	64.09%
In the Fourth Berkshire Rep. District	14,072	3,877	17,949	2,948	20,897	**78.40%**	14.11%	67.34%
In the First Hampshire Rep. District	15,957	3,417	19,374	2,874	22,248	**82.36%**	12.92%	71.72%

Actual text of Referendum on Ballot:

"Shall the State Representative from this district be instructed to vote in favor of legislation requiring that in all separation and divorce proceedings involving minor children, the court shall uphold the fundamental rights of both parents to the shared physical and legal custody of their children and the children's right to maximize their time with each parent, so far as is practical, unless one parent is found unfit or the parents agree otherwise, subject to the requirements of existing child support and abuse prevention laws?"

Children Likely to be Better Adjusted in Joint VS Sole Custody Arrangements in Most Cases, According to Review of Research (Living Situation Not As Influential As Time Spent With Parent) ...a meta-analysis of 33 studies between 1982 to 1999 that examined 1,846 sole-custody and 814 joint-custody children. The studies compared child adjustment in joint physical or joint legal custody with sole-custody settings and 251 intact families. http://www.apa.org/releases/custody2.html

"Children in joint custody arrangements had less behavior and emotional problems, had higher self-esteem, better family relations and school performance than children in sole custody arrangements. And these children were as well-adjusted as intact family children on the same measures, said Bauserman, "probably because joint custody provides the child with an opportunity to have ongoing contact with both parents."

Article: "Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review," Robert Bauserman, Ph.D., AIDS Administration/Department of Health and Mental Hygiene; *Journal of Family Psychology*, Vol 16, No. 1.

Troxel v. Granville, 527 U.S. 1069 (1999) Justice O'Connor, speaking for the Court stated, "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due Process Clause like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental intereference with certain fundamental rights and liberty interest" and "the liberty interest of parents in the care , custody, and contol of their children-is perhaps the oldest of the fundamental liberty interest recognized by this Court."

IN MICHIGAN BOTH PARENTS MUST AGREE TO JOINT PHYSICAL CUSTODY. OFTEN TIMES, A BITTER SPOUSE WILL NOT AGREE TO THIS BECAUSE THIS IS WHAT THEY KNOW WILL HURT THE OTHER SPOUSE THE MOST. ALSO, THE FRIEND OF THE COURT AS A MATTER OF ROUTINE DOES NOT RECOMMEND JOINT CUSTODY OVER SOLE CUSTODY FOR THE MOTHER. THIS BITTER SPOUSE AND THE FOC DOES NOT UNDERSTAND WHAT NEGATIVE EMOTIONAL IMPACT THIS WILL HAVE ON CHILDREN IN THE LONG RUN. THE WORDING IN MICHIGAN HB5267 IS THE RIGHT OF A CHILD! IT IS ALSO THE RIGHT OF A PARENT TO BE WITH THEIR CHILD AND THIS IS A PROTECTION CLEARLY STATED IN THE U.S. CONSTITUTION. IS IT NOT TIME WE UPDATE OUR ANTIQUATED CUSTODY LAWS?

Michigan House Bill 5267:
will bring fairness to Michigan's antiquated child custody laws! Write your local Michigan State Representative now:
http://house.michigan.gov/representatives.asp

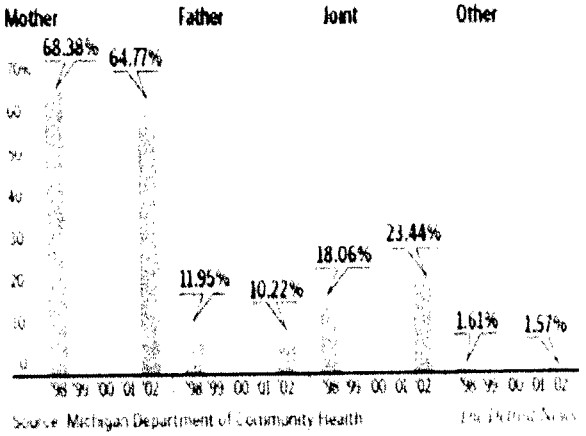
What Detroit News Readers Say About Joint Custody

The Detroit News October 31, 2004
Detroit News Survey

For divorcing parents, should Michigan courts make equally shared custodial responsibility of children the standard?

Yes 86.50%
No 13.50%

Child custody awards in divorce



Kelly, J. B. (2000). Children's adjustment in conflicted marriage and divorce: A decade review of research. *Journal of the American Academy of Child and Adolescent Psychiatry*, 39, 963-973. **"Joint custody led to better child outcomes overall. "** from abstract

See also
Kelly, J., Current research on children's postdivorce adjustment. *Family and Conciliation Courts Review*, 31.29-49, 1993

On child satisfaction: "**Children have expressed higher levels of satisfaction with joint physical custody than with sole custody arrangements;** citing the benefit of remaining close to both parents. Joint custody does not create confusion for the majority of youngsters about their living arrangements or about the finality of the divorce, nor does increase loyalty conflicts (Leupnitz, 1982; Shiller, 1986a, 1986b; Steinman, 1981)."

On parent satisfaction: "A surprising finding in one study was that **mothers who share custody are more satisfied than those having sole custody** and whose children see their father periodically. However, both groups expressed more satisfaction with their residential arrangement than did sole-custody mothers whose children had no paternal contact."

On conflict situations: "**Dual-residence (joint physical custody) parents had the highest co-operative-communication** scores but did not differ from mother custody or father custody parents in the amount of discord. Shared residence did not exacerbate or diminish conflict but did appear to lead to more co-operative communication."

On child adjustment: "The adjustment of 517 adolescents (aged 10 years, 6 months to 18 years) in three residential arrangements was compared 4.5 years after separation by Buchanan, Maccoby, and Dornbusch (in press). Looking at both family process and status variables, these researchers assessed adolescent adjustment in terms of depression, deviance, school effort, and school grades. Statistically, more boys were in dual-residence and father-residence arrangements, whereas more girls were in mother-residence arrangements. **Overall, dual-residence adolescents were better adjusted than were mother-residence adolescents."**

Michigan House Bill 5267 will allow our state's children the opportunity to spend equal time with both fit parents. Michigan custody orders must bear sufficient respect for the constitutional protections inherent in the parent-child relationship. The best way to protect children from the stresses of parental divorce is to ensure a strong relationship with both parents (when both are fit) through a balanced, equal amount of time with both. This arrangement most closely mirrors an intact family, which both common sense and careful research shows is the best situation for children. This bill takes into account the families that would not be able maintain the current school schedule of the children but still provides the children the benefit of both parents. It is in the best interest of all children to have substantially equal time with parents. Please take the time to study the proposed legislation then contact your state politicians and inform them to champion this bill. The current laws are outdated and have caused nothing but harm to our society. Here are some sites to visit on the internet to further your knowledge.

http://fatherachildsright.org/

http://www.dadsofmichigan.org/

http://www.gocrc.com/research/index.html

http://www.indianacrc.org Civil rights law suits. County level Actions.

Father a Child's Right

Box 119, 30 East Columbia Ave., Ste F1
Battle Creek, MI 49015

EMAIL admin@fatherachildsright.org

Dads and Moms of Michigan

888 892-DADS

PARENTING AS A FUNDAMENTAL RIGHT

Contents

"The interest of the parents in the care, custody, and control of their children - - is perhaps the oldest of the fundamental liberty interests recognized by this Court."

U.S. Supreme Court, 2000

"Although the dispute is symbolized by a 'versus' which signifies two adverse parties at opposite poles of a line, there is in fact a third party whose interests and rights make of the line a triangle. That person, the child who is not an official party to the lawsuit but whose well-being is in the eye of the controversy, has a right to shared parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equal access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions made by the application of both parents' wisdom, judgement and experience. The child does not forfeit these rights when the parents divorce."

Judge Dorothy T. Beasley,
Georgia Court of Appeals,
"In the Interest of A.R.B., a Child," July 2, 1993

Introduction

Supreme court decisions have found that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." Because a fundamental right cannot be denied without a compelling state interest that cannot be achieved by any less restrictive means, some legal scholars believe that, in the absence of abuse or neglect, parents have a right to both legal and physical joint custody. The argument is straightforward:

(1) A parent's right to raise a child is a constitutionally protected liberty interest. This is well established ɲstitutional law.

(2) State's granting of sole custody is sufficiently intrusive to warrant scrutiny, i.e., granting sole custody to one parent impinges on the rights of the other parent to a significant extent. This is obvious to the most casual observer. A parent whose time with a child has been limited to the typical four-days-per-month visitation clearly has had his or her rights to raise that child severely restricted.

(3) The compelling state interest in the best interest of the child can be achieved by less restrictive means than sole custody. A quarter-century of research has demonstrated that joint physical custody is as good or better than sole custody in assuring the best interest of the child.

This collection of data has been assembled to assist children's advocates in securing a child's rights to both
ents through legislation or litigation.
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PARENTING AS A PROTECTED CONSTITUTIONAL RIGHT

Don Fischer

March 8, 2001

The U.S. Supreme Court long ago noted that a parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right. May v. Anderson, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S.Ct. 840, 843 (1952). In Lassiter v. Department of Social Services, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest protection.'" quoting Stanley v. Illinois, 405 U.S. 645, 651, 31 L. Ed 2d 551, 92 S. Ct. 1208 (1972)

In Troxel v. Granville, 527 U.S. 1069 (1999) Justice O'Conner, speaking for the Court stated,

> "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due Process Clause like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental intereference with certain fundamental rights and liberty interest" and "the liberty interest of parents in the care , custody, and contol of their children-is perhaps the oldest of the fundamental liberty interest recognized by this Court."

Justice Thomas concurring in the majority's opinion said, "The opinions of the plurality, Justice Kennedy, and Justice Souter recognize such a right, but curiously none of them articulates the appropreate standard of review. I would apply stict scrutiny to infringments of fundamental rights."

This is not to say that courts should blindly or automatically impose joint custody arrangements. Clearly, there are many situations where joint custody is neither appropriate nor practical. Whenever a parent-child relationship is restricted by a family court order such restrictions must be done in the least restrictive manner. The standard that most states apply in deciding child custody is "the best interest of the child". The CRC does not believe that such a standard should be done away with, however, CRC believes such a standard should be balanced with parental rights. As we find in Reno v. Flores, 507 U.S. 292, 301 (1993)

> 'The best interest of the child,' a venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody. But it is not traditionally the sole criterion -- much less the sole constitutional criterion -- for other, less narrowly channeled judgments involving children, where their interest conflict in varying degrees with the interest of others. Even if it were shown, for example, that a particular couple desirous of adopting a child would best provide for the child's welfare, the child would nonetheless not be removed from the custody of its parents so long as they were providing for the child adequately.

Similarly, "the best interest of the child" is not the legal standard that governs parents' or guardians' exercise of their custody: so long as certain minimum requirements of the child is met, the interest of the child may be subordinated to the interest of other children, or indeed even to the interests of the parents or guardians themselves. "The best interest of the child" is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsiblities that it undertakes, which must be reconciled with many
er responsibilites.

Narrow tailoring is required when fundamental rights are involved. Thus, the state must show adverse impact upon the child before restricting a parent from the family dynamic or physical custody. It is apparent that the parent-child relationship of a married parent is protected by the equal protection and due process clauses of the Constitution. In 1978, the Supreme Court clearly indicated that only the relationships of those parents who from

the time of conception of the child, never establish custody and who fail to support or visit their child(ren) are unprotected by the equal protection and due process clauses of the Constitution. Quilloin v. Walcott, 434 U.S. 246, 255 (1978). Clearly, divorced parents enjoy the same rights and obligations to their children as if still married. The state through its family law courts, can impair a parent-child relationship through issuance of a limited visitation order, however, it must make a determination that it has a compelling interest in doing so. Trial courts must, as a matter of constitutional law, fashion orders which will maximize the time children spend with each parent unless the court determines that there are compelling justifications for not maximizing time with each parent.

Maximizing time with each parent is the only constitutional manner by which a parent is able to maintain a meaningful parent-child relationship after divorce. While geographic distance, school schedules and the like must be factored into the custody and visitation calculus, trial courts faced with a custody and visitation decision must accord appropriate constitutional respect to maintain a healthy parent child relationship by granting each parent as much time as possible with the child under the circumstances of each case.

The federal Due Process and Equal Protection rights extend to both parents equally, for example, in adoption proceedings. In Caban v. Mohammed, 441 U.S. 380, (1979) the Supreme Court found that a biological father who had for two years, but no longer, lived with his children and their mother was denied equal protection of the law under a New York statute which permitted the mother, but not the father, to veto an adoption. In Lehr v. Robinson (1983) 463 U.S. 248, the Supreme Court held that 'When an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' Caban, [citations omitted], his interest in personal contact with his child acquires substantial protection under the Due Process Clause." (Id. at 261-262)

Clearly the "best interests of the child" standard is to be read in light of the requirement that the parental-child relationship remain intact. Nor should the natural father's federal constitutional rights depend upon the identity of the person attempting to infringe upon them. That is, the threshold showing required to impinge upon a parent's relationship with one's children should not be less when married than when unmarried. One's rights should not be less when the biological mother seeks to attack the protected relationship than when a potential adopter seeks to attack that relationship. The courts have clearly held that the degree of protection afforded parental rights does not depend upon the relationship between the mother and the father. Simply, the protection afforded the parent-child relationship is not lessened because the relationship between the parents has been altered by marital dissolution. In every circumstance under which a parental right to physical custody may be terminated in which the courts have spoken on the standard of proof to be applied, the holding has been that the proof must be by clear and convincing evidence. In those cases where joint physical custody is not ordered in a divorce setting, the parent without custody has been deprived of physical custody, just as in any other setting. The identity of the person who has custody of the child is irrelevant to the requisite proof required to deprive one parent of physical custody. Surely an action to determine whether a parental right should be retained is as fundamental to the parent child relationship as an action to terminate that relationship.

The impact these judicial decisions have on the lives of all concerned cannot be overestimated. Childhood passes rapidly and it quickly becomes too late to unring the bell. Expanded visitation or joint custody may seem unimportant, but only to those who have never experienced the hollow time of forced separation. " No human bond is of greater strength than that of parent and child" Michelle W. v. Ronald W., 39 Cal. 3d354 (1985). Seton Hall Professor Holly Robinson has spelled out this argument in detail:

> It is accepted constitutional doctrine that the due process clause of the Fourteenth Amendment protects interests that are recognized as constituting "life" or Property". In a number of decisions, the Supreme Court has recognized that individuals possess a fundamental liberty interest -- entitled to constitutional protection -- regarding such matters as the decisions whether to have children, decisions concerning the upbringing of children, and the retention of their children through exercise of custody. Read together, the cases clearly establish a zone of privacy around the parent-child relationship, which only can be invaded by the state when the state possesses a sufficiently compelling reason to do so. As a result, when the marital breakdown occurs, both parents are entitled to constitutional protection of their right to continue to direct the upbringing of their children through the exercise of custody. Adequate protection of this parental right requires that parents be awarded joint custody [or expansive visitation]...unless a compelling state interest directs otherwise. H.L. Robinson, "Joint Custody: Constitutional Imperatives", 54 Cinn. L. Rev. 27, 40-41 (1985) (footnotes omitted). See also, Ellen Cancakos "Joint Custody as a Fundamental Right". Arizona Law Review, Vol. 23, No. 2 (Tucson, Az: University of Arizona Law College), Tuscon, 95721. See also, Cynthia A. McNeely: "Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court", 25 Fla. St. U.L. Rev. 335, 342+ (1998)

This proposition that the parent-child relationship in a traditional custody and visitation dispute commands

constitutional respect is admittedly lacking a long life of specific case authority approving it. This lack of specific case authority is not fatal to the proposition's vitality. At least one federal court has found that the paucity of cases recognizing the constitutional sanctity in the past. That court further held that the historical absence of a strong tradition should not result in denial of the constitutional protection for such relationships as they become increasingly prevalent. See Franz v. United States, supra.

. . further underscore the need for courts to consider the constitutional protections which attach in family law matters, one need only look to recent civil rights decisions. In Smith v. City of Fontana, 818 f. 2d 1411 (9th Cir. 1987), the court of appeals held that in a civil rights action under 42 U.S.C. section 1983 where police had killed a detainee, the children had a cognizable liberty interest under the due process clause.

The analysis of the court included a finding that " a parent has a constitutionally protected liberty interest in the companionship and society of his or her child. Id. at 1418, citing Kelson v. City of Springfield, 767 F. 2d 651 (9th Cir. 1985). In Smith the court stated " We now hold that this constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents." Id.

A failure to accord appropriate constitutional respect to the parent-child relationship between the parties herein and the minor child by failing to award joint custody or substantial parental contact would be error. We respectfully request that this Court fashion a court order which will maximize the available time the minor will spend with each parent.

CONCLUSIONS

Given the long history of cases by the Supreme Court it can no longer be doubted that the child's best interest must be weighed with a parent's fundamental liberty interest in parenting their child without undue interference by the state. Custody orders must bear sufficient respect for the constitutional protections inherent in the parent-child relationship.

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Law Journal Articles and Public Policy Documents

Daniel Lee, "Family Law and the Collapse of Culture", *Free Congress Commentary,* July 24, 2001.

- "Attorneys reading this may protest, "but there will be chaos if a primary custodian isn't designated!" I think not, but besides that due process requires that where fundamental rights are at stake there cannot be an automatic infringement on them. Rather the burden is on the state to prove its compelling interest (substantial harm) in each individual instance prior to considering the remedy (means has a very tight fit with the ends). If it is found the child is in substantial harm, the court must then issues orders as narrow as possible. That precludes any nationwide policy as exists today to award every other weekend visitation and two or so weeks in the summer."
- "Family law is a symptom of a sickness in the body politic. It can spread and be fatal, or can be cured. To date few persons have been aware of it, although parents in the homeschool movement seem to be taking a preemptive action to remove their children from the state's grasp. But it is probably now clear to all, the substantial harm standard is what protects these homeschooling parents too. Without it the state can dictate what they may and may not teach their children. As in other areas of family law destroy the substantial harm standard, and so too do these and other protections disappear."

Walther,Christopher D. " Wisconsin's Custody, Placement, and Paternity Reform Legislation ," *Wisconsin Lawyer*, Vol. 73, No. 4, April 2000

- "The changes to custody and placement law attempt to strike a delicate balance between the constitutionally protected rights of parents to raise their children without undue state interference, and the best interests of their children, who are the innocent victims of the breakup of their parents' relationship. "
- "The law now is harmonized so that parents in custody disputes with each other enjoy the same rights they already enjoyed under established law governing custody disputes with third parties. In the 1984 third

party (grandparent) custody case, Barstad v. Frazier,1 the Wisconsin Supreme Court held: "Under ordinary circumstances, a natural parent has a protected right under both state law and the United States Constitution to rear his or her children free from governmental intervention. Absent compelling reasons narrowly defined, it is not within the power of the court to displace a fit and able parent simply because in the court's view someone else could do a 'better job' of 'parenting.'" A parent's right to custody of his or her child originates from state law and the U.S. Constitution, and not from an award of custody by a court. A court now has limited authority to take away that right absent extraordinary circumstances."

Hubin, Donald C., "Parental Rights and Due Process," *Journal of Law and Family Studies*, vol. 1, no. 2. University of Utah, 1999. pp. 123-150.

- "The U.S. Supreme Court regards parental rights as fundamental. Such a status should subject any legal procedure that directly and substantively interferes with the exercise of parental rights to strict scrutiny. On the contrary, though, despite their status as fundamental constitutional rights, parental rights are routinely suspended or revoked as a result of procedures that fail to meet even minimal standards of procedural and substantive due process. This routine and cavalier deprivation of parental rights takes place in the context of divorce where, during the pendency of litigation, one parent is routinely deprived of significant parental rights without any demonstration that a state interest exists—much less that there is a compelling state interest that cannot be achieved in any less restrictive way. In marked contrast to our current practice, treating parental rights as fundamental rights requires a presumption of joint legal and physical custody upon divorce and during the pendency of divorce litigation. The presumption may be overcome, but only by clear and convincing evidence that such an arrangement is harmful to the children."

McNeely, Cynthia " Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court". *Florida State Law Review,* September, 1998.

"A claim that fundamental rights have been violated requires the reviewing court to apply strict, rather than intermediate, scrutiny. Thus, the state would need to show a necessary and compelling interest to justify its interference with the father's fundamental right. This argument might best be raised in a situation where both parents are fit, reside in the same community, and are suitable for rotating or joint physical custody, yet the trial court awards the mother primary residential custody and the father visitation of every other weekend.[307] When an activity is constitutionally protected, as is the fundamental right to parent, a state must chose the least restrictive means possible to achieve its goal.[308] Absent good cause, it would appear that the court, in this situation, would be interfering with the father's fundamental right to parent his child; the father, then, should be entitled to a review of strict scrutiny. "

Henry, Ronald K., "Divorce Reform and the Fathers' Movement" , Congressional Testimony.

"From birth and throughout the marriage, the law recognizes that the child has two parents. Both of these parents have unrestricted access and equal custodial rights with respect to the child. A custody decree is an order which restricts parents' access and custodial rights with respect to the child and like any other injunction, enjoins the parents from the exercise of their former, unrestricted rights.

While a custody decree is an injunctive order, the courts too often fail to apply the principles that are applicable to all other injunctions. In all other situations, the guiding principle is that injunctive relief should be carefully crafted to impose only such minimum restrictions upon the parties' prior freedom as is required to resolve the present dispute. In contrast and largely because of the past swings of the pendulum (automatic father sole custody, automatic mother sole custody), the most common custody decrees issued by the courts today impose maximum rather than minimum change upon the parent-child relationship."

Oddenino, Michael. "Joint Custody As a Child's Constitutional Right", 1994.

oinson, Holly. "Joint Custody: Constitutional Imperatives", *University of Cincinnati Law Review,* 1985.

Canacakos, Ellen. "Joint Custody as a Fundamental Right", *Arizona Law Review,* v.23 n. 2 (1981). pp. 785-800.

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CURRENT ACTIONS

Constitutional challenges to family law are underway in many states. Below are links to relevant current cases (**Note**: these actions were not initiated by CRC, and CRC does not necessarily agree with or support all positions of these organizations. We report them here because they have a bearing on parents' constitutional rights to raise their children.)

California - The California Law Revision Commission received a formal request from Dwain S. Barefield to amend the state's family law to recognize both parents' rights to equal participation in raising their children. The commission refused to consider the action, concluding "The staff doubts that a Law Revision Commission recommendation on the matter would have much impact on the Legislature or Governor."

CALIFORNIA LAW REVISION COMMISSION STAFF MEMORANDUM Admin.
August 28, 2001 Memorandum 2001-60

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Colorado - Center for Children's Justice

"This is a civil rights action, under state and federal law, challenging prior and newly-enacted Colorado statutes which compel the State's judiciary to make awards of child custody and parenting time, or allocation of parental responsibilities and rights and allocation of parenting time, within the context of dissolution of marriage actions and post-decree of dissolution of marriage actions concerning children. This action is brought by the above-named individual to obtain a declaratory judgment that the challenged statute, in both its prior and present form, violates well-recognized rights, including the right to due process of law, the right to equal protection of the law, and the right to the care, custody, control, companionship and nurture of one's offspring embodied in the fundamental liberty interest in family, which rights are secured by the Fourteenth Amendment of the United States Constitution and by Art. II, Secs. 3, 6, 25 and 29 of the Colorado Constitution. "

http://www.childrensjustice.org/co_civrts.html

Muchnick v. Colorado

Stillman v. Colorado

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Georgia - Sweat v. Sweat - Georgia's child support guidelines have been ruled unconstitutional. Some parts of this decision have a bearing on the constitutional isses related to shared parenting. In particular, equal protection considerations from the opinion:

Equal Protection

The United States' Constitution provides that no state may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Am. XIV, section 1. Ga. Const., Art. I, section I, paragraph 2 provides essentially the same protection.

The egregiously different burdens and benefits placed on persons similarly situated but for the award of custody, i.e., parents with the obligation to support their child(ren) and the same means for doing so as when they were married, has been explained at length above. This Court finds that such disparate treatment violates the guarantees of equal protection cited above. Jones v. Helms, 452 U.S. 412, 101 S. Ct. 2434 (4,5) (1981), South Central Bell Telephone Co. v. Alabama, 526 U.S. 160,

119 S. Ct. 1180 (1999), Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620 (1996) and Simpson v. State, 218 Ga. 337 at 339 (1962). The Guidelines do not result in awards based on the constitutionally sound principles of equal duty and proportional obligation (proportional to available financial resources such as each parent's income). See Smith v. Smith, 626 P 2d 342, 345-348 (Oregon, 1980); Meltzer v. Witsberger, 480 A.2d 991 (Pa. 1984); and Conway v. Dana, 318 A.2d 324 (Pa. 1985).

Full text of the opinion is here: Judge C. Dane Perkins' opinion

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Michigan

"Proposed amendment to the State of Michigan constitution promoting thebest interests of the child to have equal access to both parents."
Equal Child Parenting Amendment

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New York -

Press Release - New York State Custody Laws Challenged in Federal Court; Local Family Court Judge Named as Defendant

May 12th, 2003May 12th, 2003On April 30th, 2003, a lawsuit was filed in Federal District Court for the Northern District of New York challenging New York State's statutory scheme for awarding custody of minor children. The current custody statutes in New York State presume that neither parent has a right to custody and that custody will be awarded based solely he discretion of the trial court judge using the "children's best interest" standard.

Harold L. Rosenberger of Highland, New York filed the lawsuit. Mr. Rosenberger asserts that the current New York State custody statutes are unconstitutional because they fail to explicitly guarantee the parental rights of both parents, rights that have been deemed by the United States Supreme Court to be a "liberty interest" protected by the 14th Amendment of the U.S. Constitution.

The lawsuit also alleges that the Family Court Judge who presided over a custody trial exceeded her jurisdiction by placing a constraint on Mr. Rosenberger's visitation, while not applying that same constraint to the custodial parent's visitation. Ulster County Family Court Judge Marianne O. Mizel ordered that "during any of Mr. Rosenberger's periods of visitation, the children shall not be left unattended for more than fours hours."
The three children are ages 16, 16 and 10.

Mr. Rosenberger hopes that the lawsuit will proceed on its merits, and that ultimately the federal court will rule that the current New York State custody statutes are unconstitutional. He asserts that in a custody action, a fit parent may not be denied equal legal and equal physical custody of a minor child without a finding by clear and convincing evidence of parental unfitness and/or substantial harm to the child.

In August of 2001, Mr. Rosenberger was designated a non-custodial parent and ordered to pay child support. His ex-wife was given sole legal custody and sole physical custody of the children. The lawsuit names Governor George E. Pataki and Ulster Family Court Judge Marianne O. Mizel as defendants.

Contact:
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845-691-8835
HLRosenberger@Hotmail.com

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Ohio

PRESS RELEASE from Michael A. Galluzzo

Federal Court Certifies Equal Custody Question in Ohio

September 27, 2002

On Sept. 24, 2002, Federal Magistrate Judge Michael Merz, United States District Court for the Southern District of Ohio, Western Division at Dayton, (*Michael A. Galluzzo vs. Champaign County Court of Common Pleas, et al., Case No. C-3-01-174*) filed an order joining the State of Ohio as a party into a case to defend the constitutionality of Ohio statues that allow courts to deny due process in removing custody from a fit parent in divorce situations without a finding of substantial harm to the child.

On August 12, 2002, Magistrate Judge Merz withdrew his report and recommendations to dismiss the federal question action filed in April 2001 pursuant to Plaintiff Michael Galluzzo's argument that defeated the Rooker-Feldman doctrine. The Rooker-Feldman doctrine is used in a majority of federal cases to dismiss underlying state actions by asserting 'impermissible state appeals to the federal court'.

The court had given the Attorney General 30 days to file her response for intervention, for under the 11th Amendment a state has immunity from federal suit unless the state voluntarily chooses to intervene, at which time the state voluntarily waives its right to immunity from suit. The State failed to respond voluntarily and where a constitutional question was previously certified under federal law to the Attorney General, the 11th Amendment

This is the first time that a federal court has issued a certified question to rule on the merits of a presumption of equal custody in a divorce situation. This is the only case that has ever happened in a federal court that specifically addresses the federal rights of divorcing parents, fitness, the evidentiary standard requi red by federal law to prove unfitness (clear & convincing evidence-which is already part of the juvenile code in Ohio, but not the domestic code) and equal custody.

April 27, 2001, a complaint was filed in U.S. District Court, Dayton, Ohio against Champaign County Common Pleas Court. The suit filed by Michael Galluzzo (C-3-01-174) claims the court deprived him of his constitutional right to due process in a divorce action that deprived him of custody of his children without a finding of substantial harm to the children. In June of 1993, Mr. Galluzzo was designated a non-custodial parent and ordered to pay child support and his ex-wife was given full custody of the children.

It appears as though this case will move forward on the merits. What are the "merits"? **THAT IN A DIVORCE ACTION, A FIT PARENT MAY NOT BE DENIED EQUAL LEGAL AND PHYSICAL CUSTODY OF A MINOR CHILD WITHOUT A FINDING BY CLEAR AND CONVINCING EVIDENCE OF PARENTAL UNFITNESS AND SUBSTANTIAL HARM TO THE CHILD.** (See also *Santosky v. Kramer (1982).*)

Merit Brief (pdf)

Oregon - While not a court case, a bill introduced in Oregon's 2001 legislative session recognizes the right of both parents to raise their children. Complete bill is here: http://www.leg.state.or.us/01reg/measures/hb3500.dir/hb3559.intro.html

Significant wording from the bill:

"(6) To acknowledge that both parents have a fundamental right to equal parenting time, parental oversight and direct care of their children, and that such rights are a fundamental liberty interest that governments may not intrude upon without first showing a compelling interest, including the interest of prevention of harm to children. "

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Tennessee- Child's Best Interest has organized an attorney referral service for lawyers who pledge to raise constitutional arguments on behalf of their clients. These attorneys have agreed to the following:

- I understand parental rights derive from the 14th Amendment to the United States Constitution's liberty and privacy guarantees, as well as from similar provisions in state constitutions. And that these rights may only be limited upon the following of due process and equal protection provisions.
- I will raise constitutional protections on behalf of my clients in the appropriate time and manner.
- I have reviewed the Constitutional Arguments

See ChildsBestInterest.org

Factors that should be considered in a constitutional challenge::
http://childsbestinterest.org/CBI_ConstitutionalArguments.doc

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Texas

"This is a lawsuit being litigated by James Loose, President of the Center for Children's Justice Texas State Chapter, for permanent injunction against the State of Texas to permanently enjoin the enforcement of T.F.C. §§§153.002, 153.133(a)(1), 153.136, and the provisions of the Texas Family Code that provide for substantially different apportionments of times of child possession (the "Standard Possession Order" [T.F.C., Subchapter F] §153.312, et seq.) on Fourteenth Amendment Equal Protection and Due Process grounds."

.ose v. Texas

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Wisconsin - **Case is already underway in the District I Court of Appeals, decision expected summer 2002.** Jan Raz v Mary A. Brown

Brief is below:
http://www.wisconsinfathers.org/prbrief.pdf

Contact:
Bryan Holland
Wisconsin Fathers for Children and Families
Vice President - Legislative Affairs
PO Box 1742
Madison, WI 53701
http://www.wisconsinfathers.org
608-ALL-DADS

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CASE LAW

GEORGIA

Sweat v. Sweat - see above

:he interest of A.R.B., a child", Georgia Court of Appeals, Case No. A93A0698, July 2, 1993.

Although the dispute is symbolized by a 'versus' which signifies two adverse parties at opposite poles of a line, there is in fact a third party whose interests and rights make of the line a triangle. That person, the child who is not an official party to the lawsuit but whose well-being is in the eye of the controversy, has a right to shared parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equal access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions made by the application of both parents' wisdom, judgement and experience. The child does not forfeit these rights when the parents divorce.

"In the interest of A.R.B., a child", Georgia Court of Appeals, Case No. A93A0698, July 2, 1993. Subsesquently heard by the Supreme Court of Georgia, which upheld the Court of Appeals finding that, according to public policy of Georgia, joint custody was in the best interests of children when both parents are fit.]

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MARYLAND

Case 1353.
Wolinski v. Browneller
REPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND
No. 1353 September Term, 1996 (Word Perfect) (PDF)

.se 1466
ROBERT G. BOSWELL v. KIMBERLY BOSWELL Davis..
REPORTED IN THE COURT OF SPECIAL
APPEALS OF MARYLAND
No. 1466 September Term, 1996 (Word Perfect) (PDF)

Findings:

I. The need for factual finding of actual harm in order for parental visitation to be restricted.

II. The best interests standard does not ignore the interests of the parents and their importance to the child. We recognize that in almost all cases, it is in the best interest of the child to have reasonable maximum opportunity to develop a close and loving relationship with each parent.

III. A parent .....has a right of access to the child at reasonable times. The right of visitation is an IMPORTANT, NATURAL, AND LEGAL RIGHT, although it is not an absolute right, but is ONE WHICH MUST YIELD TO THE GOOD OF THE CHILD.

IV. Any limitations placed on visitation must also be reasonable. In examining the reasonableness of a visitation restriction, courts will look to see if the child is endangered by spending time with the parent:"VISITATION RIGHTS, HOWEVER, ARE NOT TO BE DENIED EVEN TO AN ERRANT PARENT .....

A court is to consider the factors stated "supra" and then make findings of fact in the record stating the particular reasons for its decision

Notes:

1. Court rejected trial court's best interest finding and said that trial court did not define any actual harm to the children from overnight visits
2. Court noted previous decisions declaring recent trend to using same criteria in visitation and custody claims.

The Boswell case was appealed from the COSA, resulting in the following decision by the COA:

Boswell v. Boswell
COURT OF APPEALS
September Term, 1998 (HTML)(Word Perfect) (PDF)

This is a VERY IMPORTANT case, becase it considers what should be considered in determining "reasonable" visitation. The court makes the following statement:

> "Ms. Boswell claims the "best interests of the child" standard should apply and that the Court of Special Appeals erred in applying an "actual harm" standard. Mr. Boswell contends that the Court of Special Appeals did apply the best interests of the child standard, correctly coupling this standard with the need for an evidentiary showing of actual harm in order for parental visitation to be restricted. In affirming the Court of Special Appeals' judgment, we want to clarify that the Court of Special Appeals' judgment should not be interpreted as articulating an "actual harm" standard that is separate and distinct from the best interests of the child standard. We seek to clarify that only one standard is used in determining whether to restrict parental visitation in the presence of non-marital partners, bests interests of the child, but **we also want to emphasize that when a court is engaging in a best interests analysis, reasonable maximum exposure to each parent is presumed to be in the best interests of the child.**"

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VIRGINIA

Supreme Court of Virginia

THOMAS O. WILLIAMS, III, ET AL. v. THOMAS O. WILLIAMS, IV, ET AL.

Record No. 971616 June 5, 1998
OPINION BY JUSTICE A. CHRISTIAN COMPTON
Full text of opinion

Excerpt: "In other words, the Court of Appeals said, "For the constitutional requirement to be satisfied, before visitation can be ordered over the objection of the child's parents, a court must find an actual harm to the child's health or welfare without such visitation." Id. at 784-85, 485 S.E.2d at 654. **A court reaches consideration of the "best interests" standard in determining visitation only after it finds harm if visitation is not ordered. Id. at 785, 485 S.E.2d at 654.** The Court of Appeals held that the circuit court failed to make the required finding of harm if visitation were denied, reversed the circuit court, and remanded the case for reconsideration of visitation in accord with the standard it set forth. Id. We agree with the Court of Appeals' discussion holding there is no constitutional infirmity in the applicable statutes and with that court's interpretation, as we have summarized it, placed upon the statutes. "

Comment This finding is consistent with Robinson's argument that the best interest standard should be tested through a requirement of finding actual harm, i.e., the best interest is satisfied by finding the least detrimental ɜrnative.

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Beck v. Beck (New Jersey) - copy of this case needed

Stanley v. Illinois

M. L. B., PETITIONER v. S. L. J.
"Choices about marriage, family life, and the upbringing of children are among associational rights this Court has
ɐd as "of
ɒ..ɔic importance in our society," Boddie, 401 U. S., at 376, rights sheltered by the Fourteenth Amendment
against the State's
unwarranted usurpation, disregard, or disrespect. See, for example, Turner v. Safley, 482 U.S. 78 (1987),
Zablocki v.
Redhail, 434 U.S. 374 (1978), and Loving v. Virginia, 388 U.S. 1 (1967) (marriage); Skinner v. Oklahoma ex rel.
Williamson, 316 U.S. 535 (1942) (procreation); Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Meyer v.
Nebraska,
262 U.S. 390 (1923) (raising children). M. L. B.'s case, involving the State's authority to sever permanently a
parent child
bond, [n.8] demands the close consideration the Court has long required when a family association so undeniably
important is at stake. We approach M. L. B.'s petition mindful of the gravity of the sanction imposed on her and in
light of two prior decisions most immediately in point: Lassiter v. Department of Social Servs. of Durham Cty., 452
U.S. 18 (1981), and Santosky v. Kramer, 455 U.S. 745 (1982). "

SANTOSKY ET AL. v. KRAMER , COMMISSIONER, ULSTER COUNTY
DEPARTMENT OF SOCIAL SERVICES, ET AL. No. 80-5889.
SUPREME COURT OF THE UNITED STATES
455 U.S. 745; 71 L. Ed. 2d 599; 50 U.S.L.W. 4333; 102 S.
Ct. 1388 Argued November 10, 1981 March 24, 1982

▪▪ICHIGAN

Travis Ballard, NCFC, brief:
Michigan case - see Section B

NEW YORK

New York case, www.kids-right.org

"We the People" organization - Class Action Lawsuit

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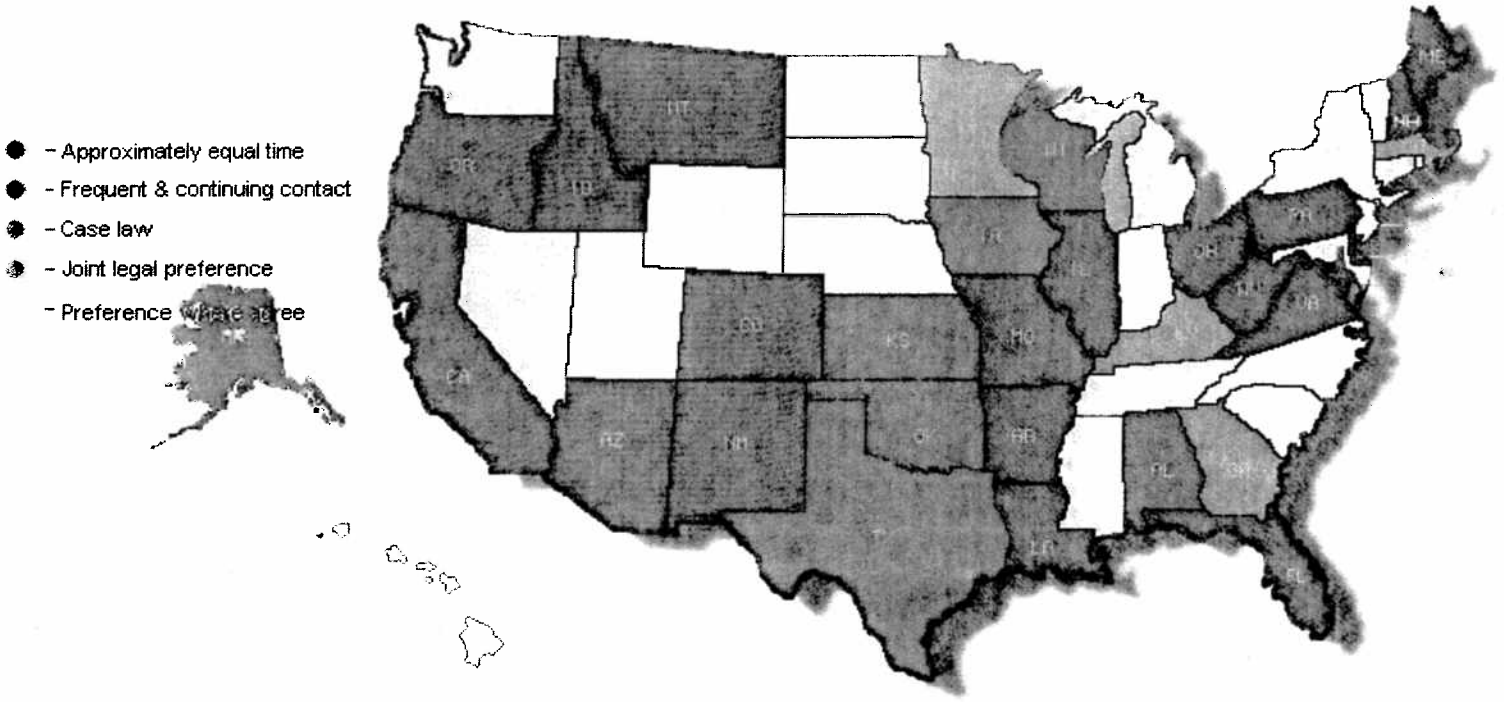
Joint Custody and Shared Parenting Statutes

Source: state legislatures (last updated, 29 Jan 2005)

Recognizing the benefits of joint custody and shared parenting, most states have adopted laws to encourage the involvement of b parents. These laws most often take the form of language promoting "frequent and continuing contact" with both parents, in contr with the more traumatic traditional schedule of four days per month with the noncustodial parent. Some states have begun to adoj n stronger protections, giving children approximately equal time with each parent. This page provides highlights of law ncouraging shared parenting in the United States to assist children's advocates and legislators in becoming more knowledgable about the provisions and language used in joint custody statutes.

To learn more, see:

Joint Custody - What the Research Says, What Parents Say
Parenting and the Constitution - Your Right to Equal Participation in Raising Your Child
Child Custody Statistics 2004 **NEW**
Risks of sole custody



States	Statutory language or case law
AK, IA, KS, OK, TX, WI	substantially equal shared physical custody; maximize time with both parents, or similar language - 6
AL, AR, AZ, CA, CO, DC, DE, FL,NH, ID, IL, LA, ME, MO, MT, NM, OH, OR, PA, VA, WV	"frequent and continuing contact" or similar language - 21
GA, KY	case law - 2
MA, MN,	joint legal preference only - 2
CT, MI, MS, NV, TN, VT, WA	joint custody presumed where both parents agree - 7
HI, IN, MD NC, ND, NE, NJ, NY, RI, SC, SD, UT, WY	no statutory language promoting shared parenting - 13

ALABAMA

Section 30-3-150

State policy.

Joint Custody.—It is the policy of this state to assure that minor children have frequent and continuing contact with parents who h shown the ability to act in the best interest of their children and to encourage parents to share in the rights and responsibilities of ring their children after the parents have separated or dissolved their marriage. Joint custody does not necessarily mean equal ysical custody. *(Acts 1996, No. 96-520, p. 666, §1.)*

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ALASKA

AS 25.20.070

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.130.
See also: Alaska shared custody law

AS 25.24.150

In an action for divorce or for legal separation or for placement of a child when one or both parents have died, the court may, if has jurisdiction under AS 25.30.300 - 25.30.320, and is an appropriate forum under AS 25.30.350 and 25.30.360, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child.
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ARIZONA

Arizona statutes Title 25, Chapter 4, 25-403

A. The court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the cl The court shall consider all relevant factors, including:

1. The wishes of the child's parent or parents as to custody.
2. The wishes of the child as to the custodian.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
4. The child's adjustment to home, school and community.
5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.
7. Whether one parent, both parents or neither parent has provided primary care of the child.
8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.
9. Whether a parent has complied with chapter 3, article 5 of this title.
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.
BACK TO TOP

KANSAS
3 9, § 9-13-101.

Award of custody.
(a) In an action for divorce, the award of custody of the children of the marriage shall be made without regard to the sex of the par but solely in accordance with the welfare and best interests of the children.
(b)(1) (A) (i) When in the best interests of a child, custody shall be awarded in such a way so as to assure the frequent and contin contact of the child with both parents.
(2) To this effect, in making an order for custody to either parent, the court may consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent.
BACK TO TOP

CALIFORNIA
FAMILY CODE SECTION 3020-3032

(b) The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.
BACK TO TOP

COLORADO

SECTION 10. 1410124, Colorado Revised Statutes:
14-10-124. Best interests of child. (1) Legislative declaration. The general assembly finds and declares that it is in the best interes all parties to encourage frequent and continuing contact between each parent and the minor children of the marriage after the par have separated or dissolved their marriage. In order to effectuate this goal, the general assembly urges parents to share the right and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents.
BACK TO TOP

CONNECTICUT
sumption in favor of joint custody if both parents agree.

Section 46b-56a joint custody
BACK TO TOP

DELAWARE

Title 13, Chapter 7§ 728. Residence: visitation; sanctions.

(a) The Court shall determine, whether the parents have joint legal custody of the child or one of them has sole legal custody of tl child, with which parent the child shall primarily reside and a schedule of visitation with the other parent, consistent with the child' best interests and maturity, which is designed to permit and encourage the child to have frequent and meaningful contact with bo parents unless the Court finds, after a hearing, that contact of the child with 1 parent would endanger the child's physical health c ficantly impair his or her emotional development.

BACK TO TOP

DISTRICT OF COLUMBIA

D.C. Code 16-911. Alimony pendente lite; suit money; enforcement; custody of children. (a)(5) and 16-914. Retention of jurisdictic as to alimony and custody of children. (a)(2)

Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent ar continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child- rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status.

BACK TO TOP

FLORIDA

61.13 Custody and support of children; visitation rights; power of court in making orders.

(b)1. The court shall determine all matters relating to custody of each minor child of the parties in accordance with the best interes of the child and in accordance with the Uniform Child Custody Jurisdiction Act. It is the public policy of this state to assure that ea minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. After considering all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of
the child.

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GEORGIA

e Law: Court of Appeals of Georgia, Case No. A93A0698, 7/2/93 IN the INTEREST of A.R.B., a child

In a unanimous opinion, presiding Judge Dorothy T. Beasley stated: "Although the dispute is symbolized by a 'versus' which signif two adverse parties at opposite poles of a line, there is in fact a third party whose interests and rights make of the line a triangle. T person, the child who is not an official party to the lawsuit but whose wellbeing is in the eye of the controversy, has a right to share parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equ access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions m by the application of both parents' wisdom, judgment and experience. The child does not forfeit these rights when the parents divorce."

The A.R.B. case was subsequently heard by the Supreme Court of Georgia, which upheld the Court of Appeals' finding that, according to public policy of Georgia, joint custody was in the best interests of children when both parents are fit.

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HAWAII

no statutory language promoting shared parenting
571-46.1 – joint custody

Upon the application of either parents, joint custody may be awarded in the discretion of the court.

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IDAHO

32-717B.
(1) The court may award either joint physical custody or joint legal custody or bothas between the parents or parties as the court determines is for the bestinterests of the minor child or children. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody.

Except as provided in subsection (5), of this section, absent a preponderance of the evidence to the contrary, there shall be a presumption that joint custody is in the best interests of a minor child or children.
(5) There shall be a presumption that joint custody is not in the best interests of a minor child if one (1) of the parents is found by the court to be a habitual perpetrator of domestic violence as defined in section 39-6303, Idaho Code.

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ILLINOIS
750 ILCS 5/602

(c) Unless the court finds the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 the court shall presume that the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of their child is in the best interest of the child.

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INDIANA
no statutory language promoting shared parenting

Annotated Indiana Code; Title 31, Article 15, Chapters 17-2-8, 17-2-8.5, and 17-2-15
Joint custody may be awarded if it is in the best interest of the child.

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IOWA

598.41 Custody of children.
1. a. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent likely to result from such contact with one parent.
2. b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

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KANSAS

Chapter 60.--PROCEDURE, CIVIL
Article 16 - 60-1610 DIVORCE AND MAINTENANCE
(4) Types of custodial arrangements. Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall include, but not be limited to, one of the following, in the order of preference.

(A) Joint custody. The court may place the custody of a child with both parties on a shared or joint-custody basis. In that event, the parties shall have equal rights to make decisions in the best interests of the child under their custody. When a child is placed in the joint custody of the child's parents, the court may further determine that the residency of the child shall be divided either in an equal manner with regard to time of residency or on the basis of a primary residency arrangement for the child. The court, in its discretion, may require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation plan to the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.

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KENTUCKY

Case Law: Chalupa v. Chalupa, Kentucky Court of Appeals, No. 90-CA-001145-MR; (May 1, 1992).

Judge Schroder, writing for the majority:
A divorce from a spouse is not a divorce from their children, nor should custody decisions be used as a punishment. Joint custody can benefit the children, the divorced parents, and society in general by having both parents involved in the children's upbringing. The difficult and delicate nature of deciding what is in the best interest of the child leads this Court to interpret the child's best interest as requiring a trial court to consider joint custody first, before the more traumatic sole custody. In finding a preference for joint custody is in the best interest of the child, even in a bitter divorce, the court is encouraging the parents to cooperate with each other and to stay on their best behavior. Joint custody can be modified if a party is acting in bad faith or is uncooperative. The trial court at any time can review joint custody and if a party is being unreasonable, modify the custody to sole custody in favor of the reasonable parent. Surely, with the stakes so high, there would be more cooperation which leads to the child's best interest, the parents' best interest, fewer court appearances and judicial economy. Starting out with sole custody would deprive one parent of the vital input.

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LOUISIANA

Art. 132. Award of custody to parents

If the parents agree who is to have custody, the court shall award custody in accordance with their agreement unless the best inte

of the child requires a different award.

In the absence of agreement, or if the agreement is not in the best interest of the child, the court shall award custody to the par jointly; however, if custody in one parent is shown by clear and convincing evidence to serve the best interest of the child, the c shall award custody to that parent.

[illegible] 1992, No. 782, §1; Acts 1993, No. 261, §1, eff. Jan. 1, 1994.

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MAINE

Title 19-A 1653. Parental rights and responsibilities

C. The Legislature finds and declares that it is the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encour parents to share the rights and responsibilities of child rearing in order to effect this policy

(1) Allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibili according to the best interest of the child as provided in subsection 3. An award of shared parental rights and responsibilities may include either an allocation of the child's primary residential care to one parent and rights of parent-child contact to the other parer or a sharing of the child's primary residential care by both parents. If either or both parents request an award of shared primary residential care and the court does not award shared primary residential care of the child, the court shall state in its decision the reasons why shared primary residential care is not in the best interest of the child;

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MARYLAND

no statutory language promoting shared parenting

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MASSACHUSETTS

ALM GL ch. 208, 31 (2004)

A presumption for shared legal custody at temporary hearing; at permanent hearing, shared parenting an option if one parent requests it. In making an order or judgement relative to the custody of children, the rights of the parents shall, in the absence of [illegible]conduct, be held to be equal, and the happiness and welfare of the children shall determine their custody. When considering tl [illegible]piness and welfare of the child, the court shall consider whether or not the child's present or past living conditions adversely af his physical, mental, moral or emotional health.

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MICHIGAN

MCL 722.26a - presumption in favor of joint custody if both parents agree.

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MINNESOTA

Minn. Stat. 518.17 (2003)
presumption in favor of joint legal custody

Joint Legal or Physical Custody Guidelines.
In addition to the factors listed above, where either joint legal custody or joint physical custody is contemplated or sought, the cou shall consider the following relevant factors:
1. The ability of parents to cooperate in the rearing of their children;
2. Methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;
3. Whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and
4. Whether domestic abuse has occurred between the parties.

The court shall use a refutable presumption that upon request of either or both parties, joint legal custody is in the best interest of child. However, the court shall use a refutable presumption that joint legal or physical custody is not in the best interests of the chi domestic abuse has occurred between the parents.

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MISSISSIPPI

presumption in favor of joint custody if both parents agree.

[illegible] 93, Chapter 5

93-5-24. Types of custody awarded by court; joint custody; access to information pertaining to child by noncustodial parent.

(1)Custody may be awarded as follows according to the best interests of the child:

(a)Physical and legal custody to both parents jointly pursuant to subsections 2 through 7.

(b) Physical custody to both parents jointly pursuant to subsections 2 through 7 and legal custody to either parent.

(c) Legal custody to both parents jointly pursuant to subsections 2 through 7 and physical custody to either parent.

(d) Physical and legal custody to either parent.

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MISSOURI

Chapter 452
Dissolution of Marriage, Divorce, Alimony and Separate Maintenance
Section 452.375

4. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contac with both parents after the parents have separated or dissolved their marriage is in the best interest of the child, except for cases where the court specifically finds that such contact is not in the best interest of the child, and that it is the public policy of this state encourage parents to participate in decisions affecting the health, education and welfare of their children, and to resolve disputes involving their children amicably through alternative dispute resolution. In order to effectuate these policies, the court shall determ the custody arrangement which will best assure both parents participate in such decisions and have frequent, continuing and meaningful contact with their children so long as it is in the best interests of the child.
5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider each of the following as follows:

(1) Joint physical and joint legal custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint physical and joint legal custody award. The residence of one of the parents shall be designated as the address of the child fo mailing and educational purposes;
(2) Joint physical custody with one party granted sole legal custody. The residence of one of the parents shall be designated as th address of the child for mailing and educational purposes;
(3) Joint legal custody with one party granted sole physical custody;
(4) Sole custody to either parent; or
Third-party custody or visitation:

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MONTANA

40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child. T court shall consider all relevant parenting factors, which may include but are not limited to:

...
(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests.

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NEBRASKA
no statutory language promoting shared parenting

42-364
Dissolution or legal separation; decree; parenting plan; children; custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings.

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NEW JERSEY
no statutory language promoting shared parenting

Statutes Annotated; Title 2A, Chapter 34-23
Sole or joint custody may be awarded based on the following factors: (1) the physical, emotional, mental, religious, and social nee of the child; and (2) the preference of the child, if the child is of sufficient age and capacity.

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NEVADA
presumption in favor of joint custody if both parents agree.

S 125.490 Joint custody.
1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the pare have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.
2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to jo legal custody.

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NEW HAMPSHIRE
RSA 461-A:2
Presumption in favor of joint custody.

'-A:2 Statement of Purpose. –
Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this sta unless it is clearly shown that in a particular case it is detrimental to a child, to:
(a) Support frequent and continuing contact between each child and both parents.
(b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.

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NEW MEXICO

Custody: §§ 40-4-9, 40-4-9.1
A. There shall be a presumption that joint custody is in the best interestes of a child in an initial custody determination.
...
(4) whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such infolvement and influence from both parents;
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NEW YORK
no statutory language promoting shared parenting

New York Consolidated Laws, Chapter 14
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NORTH CAROLINA
no statutory language promoting shared parenting

§ 50-13.2. (a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, t ·urt shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the saf ither party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whethe natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to parents shall be considered upon the request of either parent.
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NORTH DAKOTA
no statutory language promoting shared parenting

Code; Chapter 14-05
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OHIO

ORC Ann. 3109.04 (2004)

(c) Whenever possible, the court shall require that a shared parenting plan approved under division (D)(1)(a)(i), (ii), or (iii) of this section ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continu contact with any parent would not be in the best interest of the child.
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OKLAHOMA

Statutes as Section 110.1 of Title 43, unless there is created a duplication in numbering, reads as follows:
It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the al to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their chil after the parents have separated or dissolved their marriage. To effectuate this policy, if requested by a parent, the court shall pro substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that such sha parenting would be detrimental to such child. The burden of proof that such shared parenting would be detrimental to such child s upon the parent requesting sole custody.
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OREGON

107.105 Provisions of decree. (1) Whenever the court grants a decree of marital annulment, dissolution or separation,

it has power further to decree as follows:
(a) For the future care and custody, by one party or jointly, of all minor children of the parties born, adopted or conceived during th marriage, and for minor children born to the parties prior to the marriage, as the court may deem just and proper pursuant to ORS 107.137. The court may hold a hearing to decide the custody issue prior to any other issues. When appropriate, the court shall recognize the value of close contact with both parents and encourage joint parental custody and joint responsibility for the welfare the children.

For parenting time rights of the parent not having custody of such children, and for visitation rights of grandparents pursuant to petition filed under ORS 109.121. When a parenting plan has been developed as required by ORS 107.102, the court shall review parenting plan and, if approved, incorporate the parenting plan into the court's final order. When incorporated into a final order, the parenting plan is determinative of parenting time rights. If the parents have been unable to develop a parenting plan or if either of parents requests the court to develop a detailed parenting plan, the court shall develop the parenting plan in the best interest of th child, ensuring the noncustodial parent sufficient access to the child to provide for appropriate quality parenting time and assuring safety of the parties, if implicated. The court may deny parenting time to the noncustodial parent under this subsection only if the court finds that parenting time would endanger the health or safety of the child. The court shall recognize the value of close contac with both parents and encourage, where practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties.
BACK TO TOP

PENNSYLVANIA
Consolidated Statutes Annotated, Title 23, Sections 5302, 5303, 5304, 5305, and 5306].

5301. The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing of the rights and responsibilities of child rearing by both parents and continuing contact of the child or children with grandparents when a parent is deceased, divorced or separated.

§ 5303. Award of custody, partial custody or visitation.

(a) General rule.--In making an order for custody, partial custody or visitation to either parent, the court shall consider, among othe factors, which parent is more likely to encourage, permit and allow frequent and continuing contact and physical access between noncustodial parent and the child.
BACK TO TOP

RHODE ISLAND
statutory language promoting shared parenting

Title 15, Chapter 15-5-16
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SOUTH CAROLINA
no statutory language promoting shared parenting

South Carolina Code; Chapter 3, Sections 20-3-160, 20-7-100 and 20-7-1520

In awarding child custody, the factors for consideration are as follows: (1) the circumstances of the spouses; (2) the nature of the case; (3) the religious faith of the parents and child; (4) the welfare of the child; and (5) the best spiritual and other interests of the child. The parents both have equal rights regarding any award of custody of children.
BACK TO TOP

SOUTH DAKOTA
no statutory language promoting shared parenting

Title 25, Chapters 25-4-45.
Sole or joint child custody is to be awarded based on the discretion of the court and the best interests of the child.
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TENNESSEE
presumption in favor of joint custody if both parents agree

36-6-101.
Decree for custody and support of child

(2) Except as provided in the following sentence, neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody is established, but the court shall have the widest discretion to order a custody arrangement that the best interest of the child. Unless the court finds by clear and convincing evidence to the contrary, there is a presumption tha joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child. For the purpose of assisting the court in making a determina whether an award of joint
custody is appropriate, the court may direct that an investigation be conducted. The burden of proof necessary to modify an order

joint custody at a subsequent proceeding shall be by a preponderance of the evidence.
BACK TO TOP

TEXAS

Texas law provides a minimum of 42% time with the non-custodial parent, if the non-custodial parent chooses to exercise the opti ir Section 153.317. Texas law is complex, and according to the National Fathers Resource Center , "Many dads don't know abo and their attorneys don't tell them, so they fail to make the election, which means that they will be stuck with 'standard possession' rather than what we commonly refer to as expanded standard possession." By exercising other parts of the Texas statutes, it is often possible to extend the time allocation to roughly 50%.

CHAPTER 153. CONSERVATORSHIP, POSSESSION, AND ACCESS SUBCHAPTER A. GENERAL PROVISIONS
Sec. 153.001. Public Policy.
"(a) The public policy of this state is to: (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child:"
SUBCHAPTER C. PARENT APPOINTED AS SOLE OR JOINT MANAGING CONSERVATOR
Sec. 153.131. Presumption That Parent to be Appointed Managing Conservator.
"(b) It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best inter of the child."
BACK TO TOP

UTAH
no statutory language promoting shared parenting

30-3-10.2.
(1) The court may order joint legal custody or joint physical custody or both if the parents have filed a parenting plan in accorda with Section 30-3-10.8 and it determines that joint legal custody or joint physical custody or both is in the best interest of the child.
BACK TO TOP

VERMONT
presumption in favor of joint custody if both parents agree
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VIRGINIA

)-124 2. Court-ordered custody and visitation arrangements.

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure mino children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of eithe The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitima interest. The court may award joint custody or sole custody.
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WASHINGTON
presumption in favor of joint custody if both parents agree.

26.09 RCW
(1) There shall be a presumption that shared parental responsibility is in the best interests of minor children unless:
(a) The parents have agreed to an award of residential placement or decision-making authority to only one parent; or
(b) The court finds that shared parental responsibility would be detrimental to the child or children.
(2) A parent alleging that shared parental responsibility would be detrimental to the child or children shall have the burden of establishing the allegation.
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WEST VIRGINIA
Chapter 48, Article 2

"The child's best interests are defined as: stability; planning and agreement about custodial arrangements and upbringing; contin and meaningful contact between the child and each parent; assuring that the child is in a healthful and secure environment; and expeditious decision making process regarding arrangements for the child's care and control."
"If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall sume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests."
K TO TOP

WISCONSIN
presumption in favor of joint custody if both parents agree.
<>767.24 (2) (am) "The court shall presume that joint legal custody is in the best interest of the child."

767.24 (4) (a) "The court shall set a placement schedule that allows the child to have regularly occurring meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households".

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WYOMING

tatutory language promoting shared parenting

20-2-201.

(a) In granting a divorce, separation or annulment of a marriage or upon the establishment of paternity pursuant to W.S. 14-2-401 through 14-2-907, the court may make by decree or order any disposition of the children that appears most expedient and in the b interests of the children.

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last changed 7 Feb 2005

Child Custody Statistics 2004

Single Parent Families with Own Children Under 18

Data source: U.S. Census, *America's Families and Living Arrangements 2004* Current Population Survey, March 2005. Table FG-6.

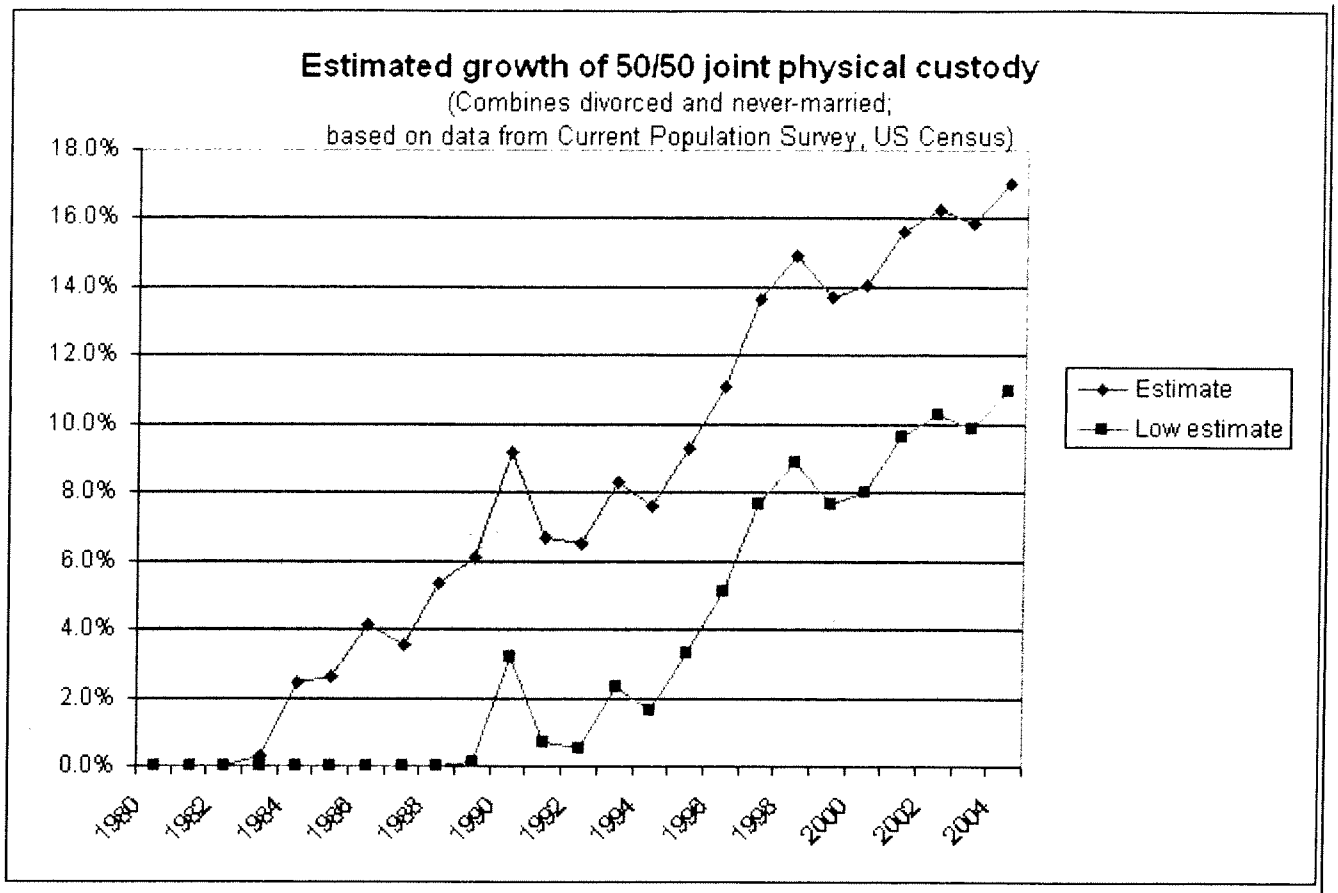
Highlights and Notes:

- To reflect final custody settlements as accurately as possible, data below include only "never married" and "divorced" families. "Widowed" and "separated" figures are not included.
- Census does not maintain a separate category for joint physical custody. Instead, children are counted as living with the parent where they reside most. For example, if a child lives 60% with the mother and 40% with father, the child is counted as living with the mother. For children who spend equal amounts of time with both parents, the survey counts them as living with the parent where they are found on the day of the survey. Thus half of the children in 50/50 arrangements are recorded as living with their mothers and half as living with their fathers.
- For the total population, divorced single parent families headed by fathers exceeded 20%. Father-headed families increase with income, exceeding 30% at several income levels for white and Hispanic families, and at $100,000 and over for black families.
- White and Hispanic families have similar levels of mother and father-headed famlies across all income categories, while father custody is rare for black families.
- Divorced and never-married families have approximately the same breakdown between mother- and father-headed families.
- Joint physical custody levels cannot be determined from the data, because children are counted with the parent they live with most. For equal custody, in which children spend the same amount of time with father and mother, Census procedures result in children being assigned randomly to either father or mother, so half of 50/50 custody families are counted as headed by fathers and half as headed by mothers. The population of 50/50 custody families can be estimated by the following formula:

$J = 2(C - F)$, where

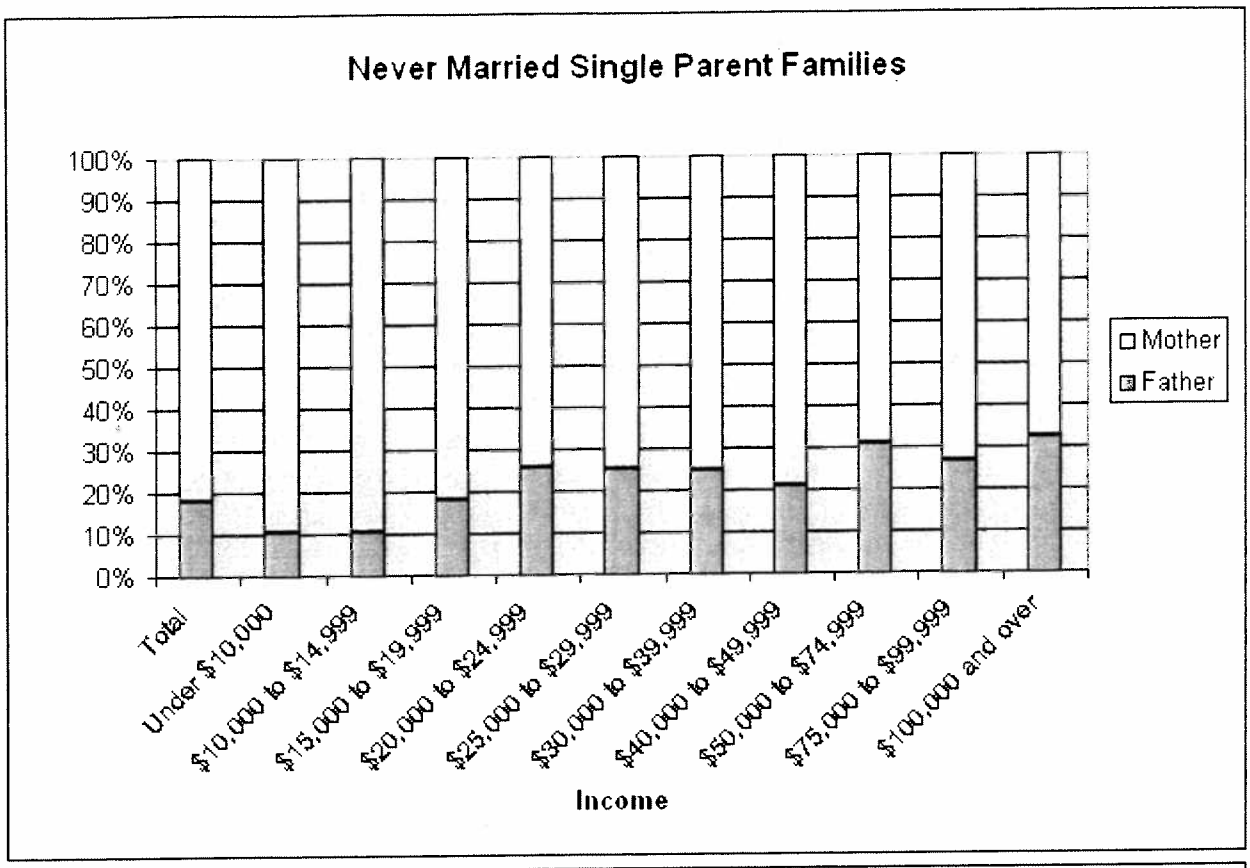
J = 50/50 joint custody families;
C = percent of families listed by Census as headed by fathers;
F = percent of families where children live more than half time with father .

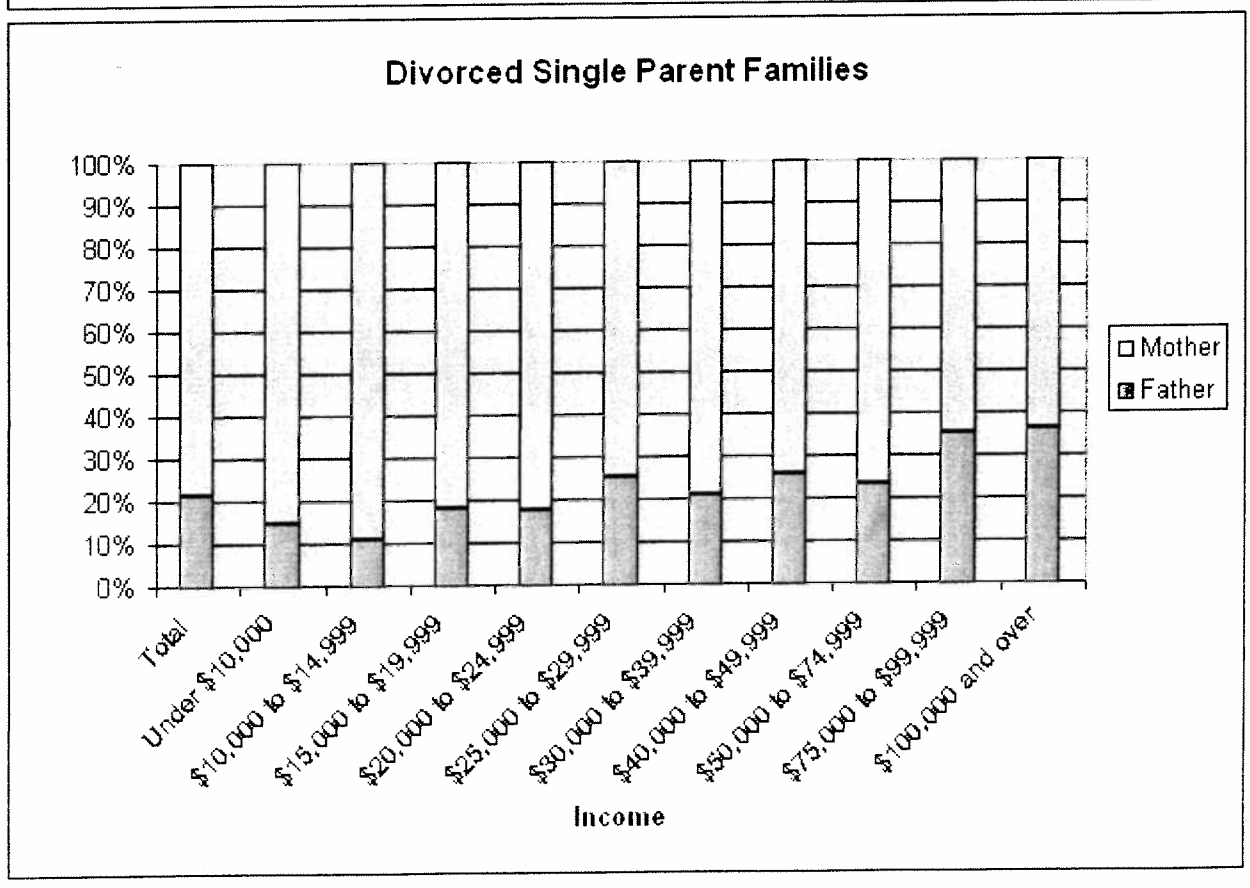
The best estimator of F is the percent of children in sole custody of fathers, because joint physical custody assignments that are not 50/50 usually give the majority of time to mothers. Father sole custody families historically have been approximately 9% of single parent families, ranging up to 12% in some states. Based on the 9% estimate, the level of 50/50 custody for divorced families is approximately 2(21 - 9) = 24%. If the level of father sole custody families is 12%, then equal joint custody families are approximately 18% of the total. For never married and divorced families combined, the estimate for 50/50 joint physical custody ranges from approximately 11% to 17%. (See chart below.)

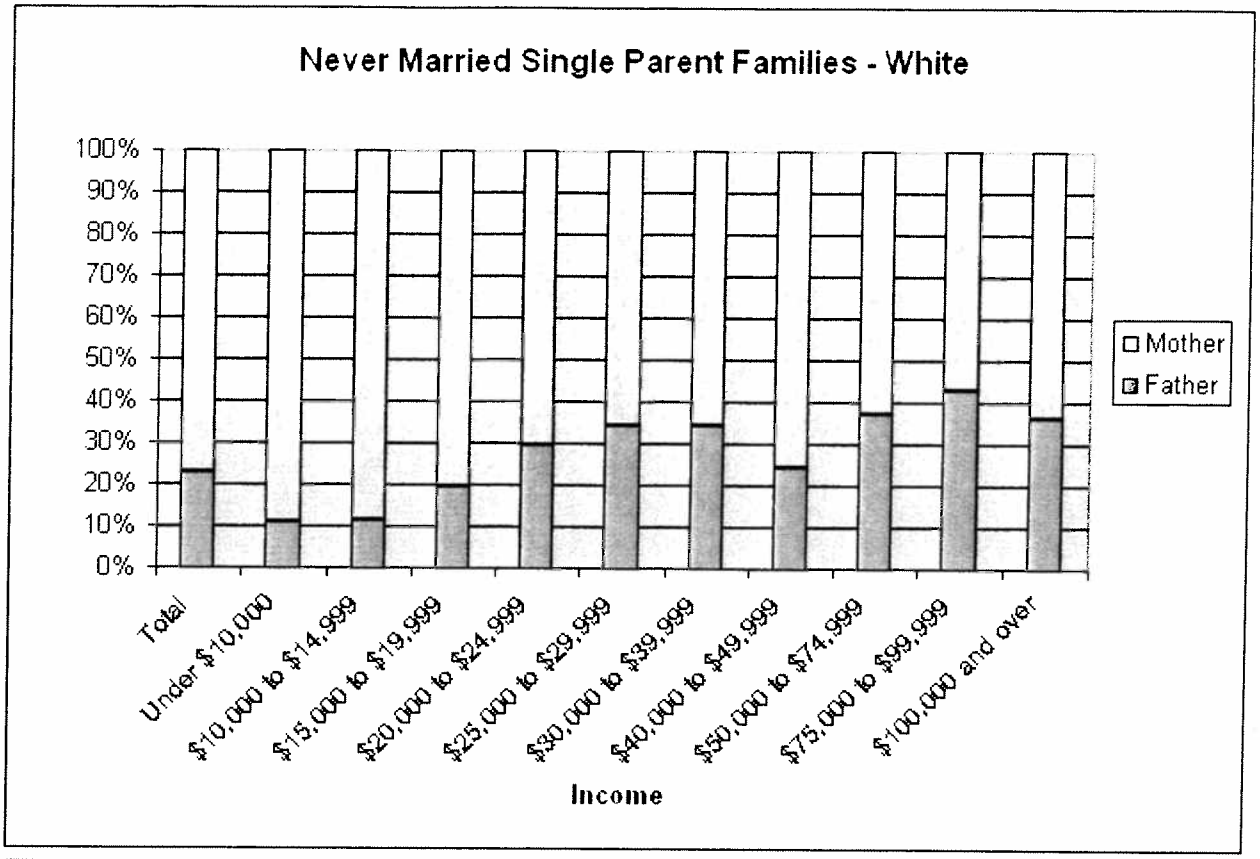


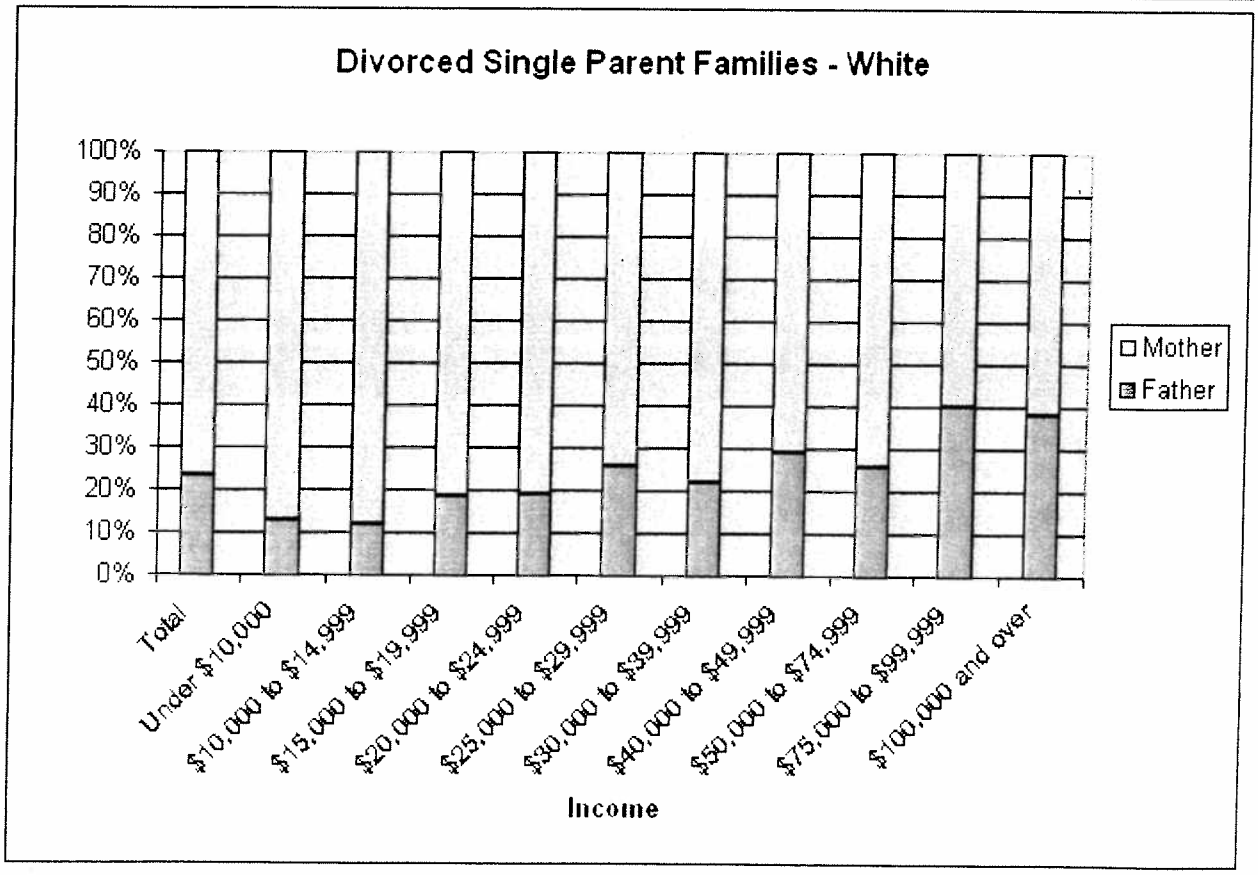
Custody in Single Parent Families by Poverty Level		Father		Mother	
		Number	Percent	Number	Percent
White	Below poverty level	194	13.1%	1,287	86.9%
	Above poverty level	991	26.7%	2,716	73.3%
Black	Below poverty level	108	10.2%	952	89.8%
	Above poverty level	187	14.3%	1,122	85.7%
Hispanic	Below poverty level	85	16.2%	439	83.8%
	Above poverty level	191	26.8%	522	73.2%

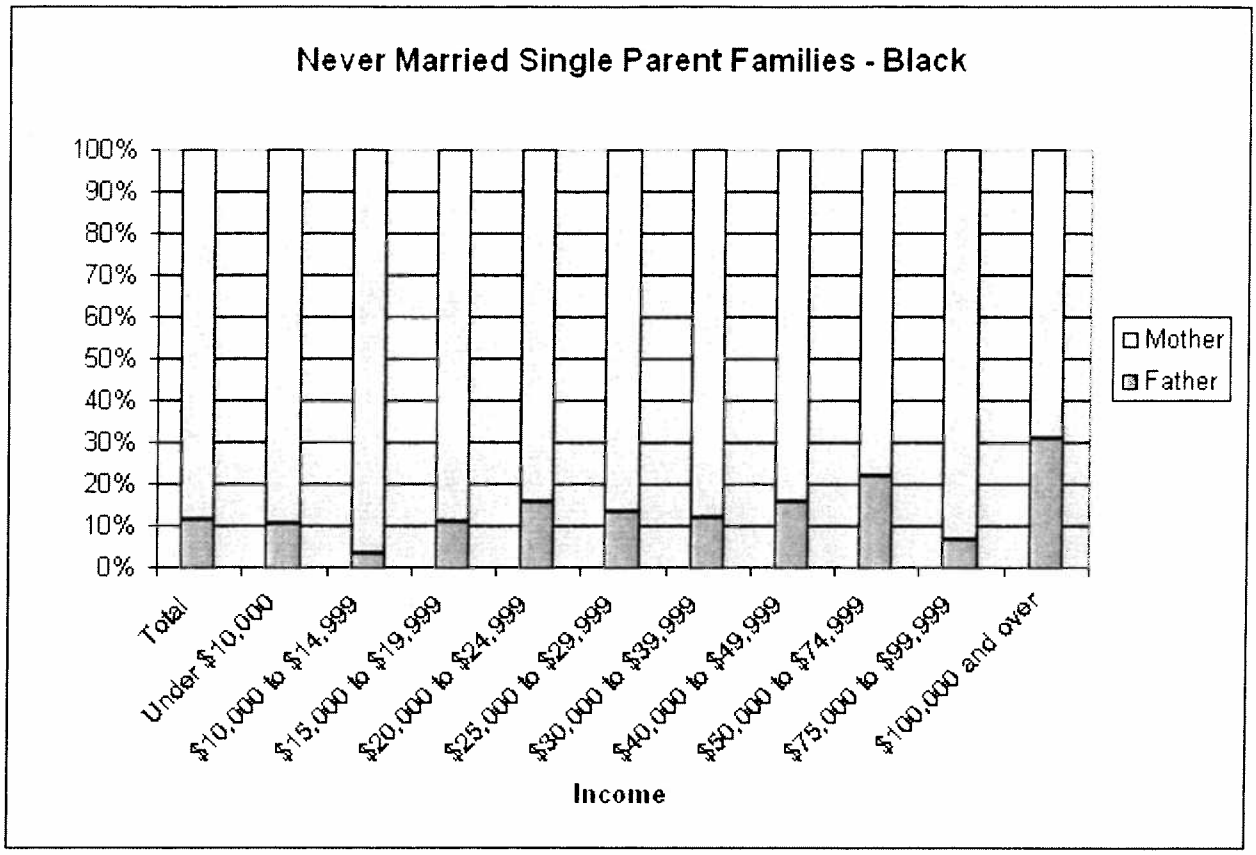
Source: U.S. Census, *America's Families and Living Arrangements 2004*
Current Population Survey, March 2005. Table FG-6.
(Figures combine never married and divorced families; numbers in thousands)


Never Married Single Parent Families
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Divorced Single Parent Families
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Never Married Single Parent Families - White
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Divorced Single Parent Families - White
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Never Married Single Parent Families - Black
100%
90%
80%
70%
60%
50%
40%
30%
20%
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0%
Mother
Father
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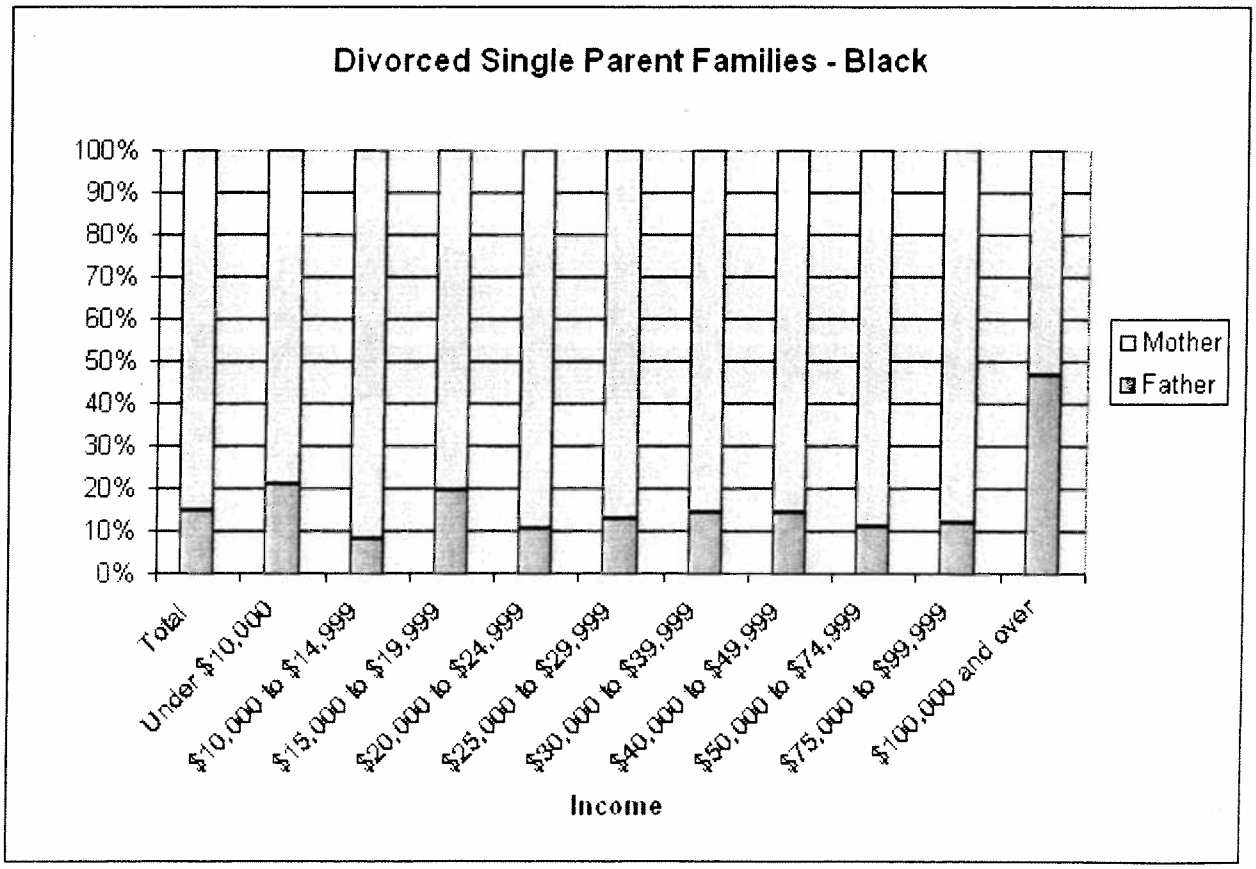
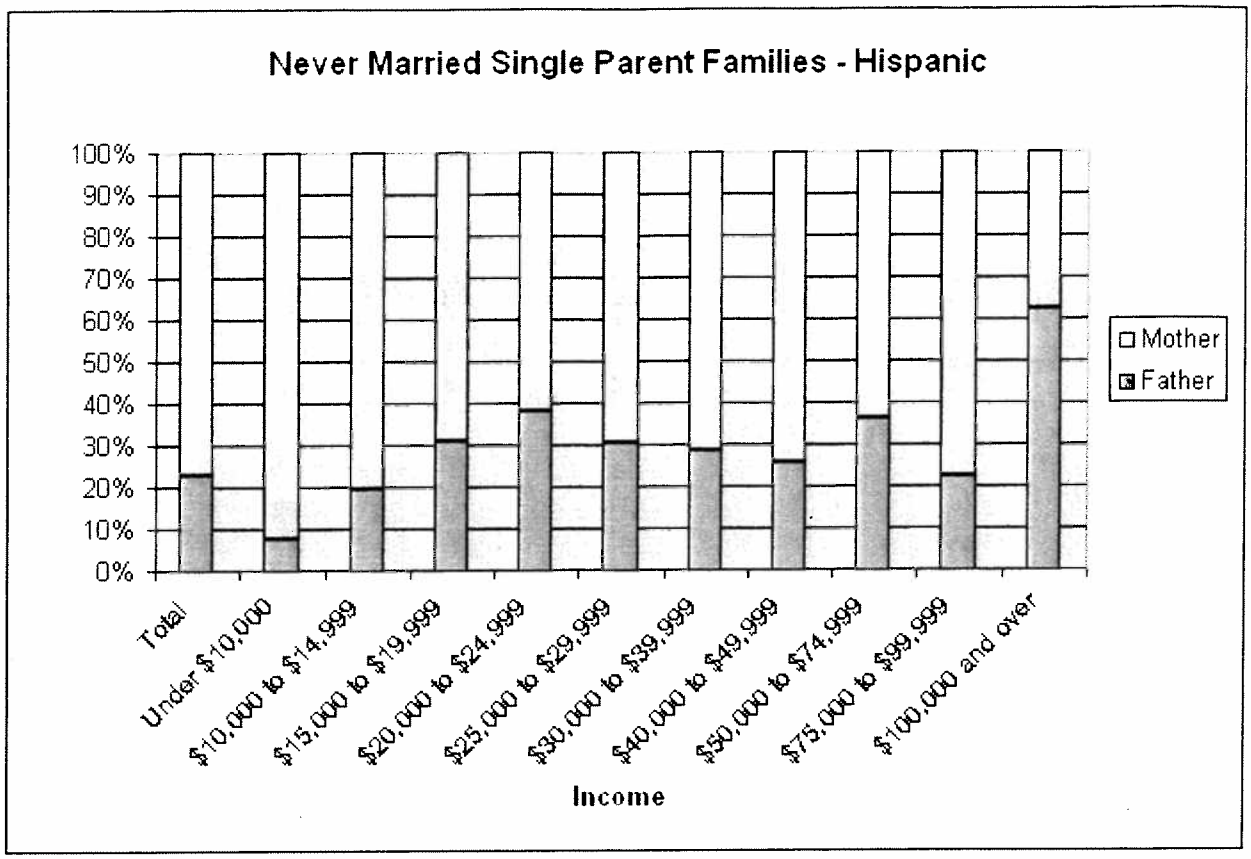
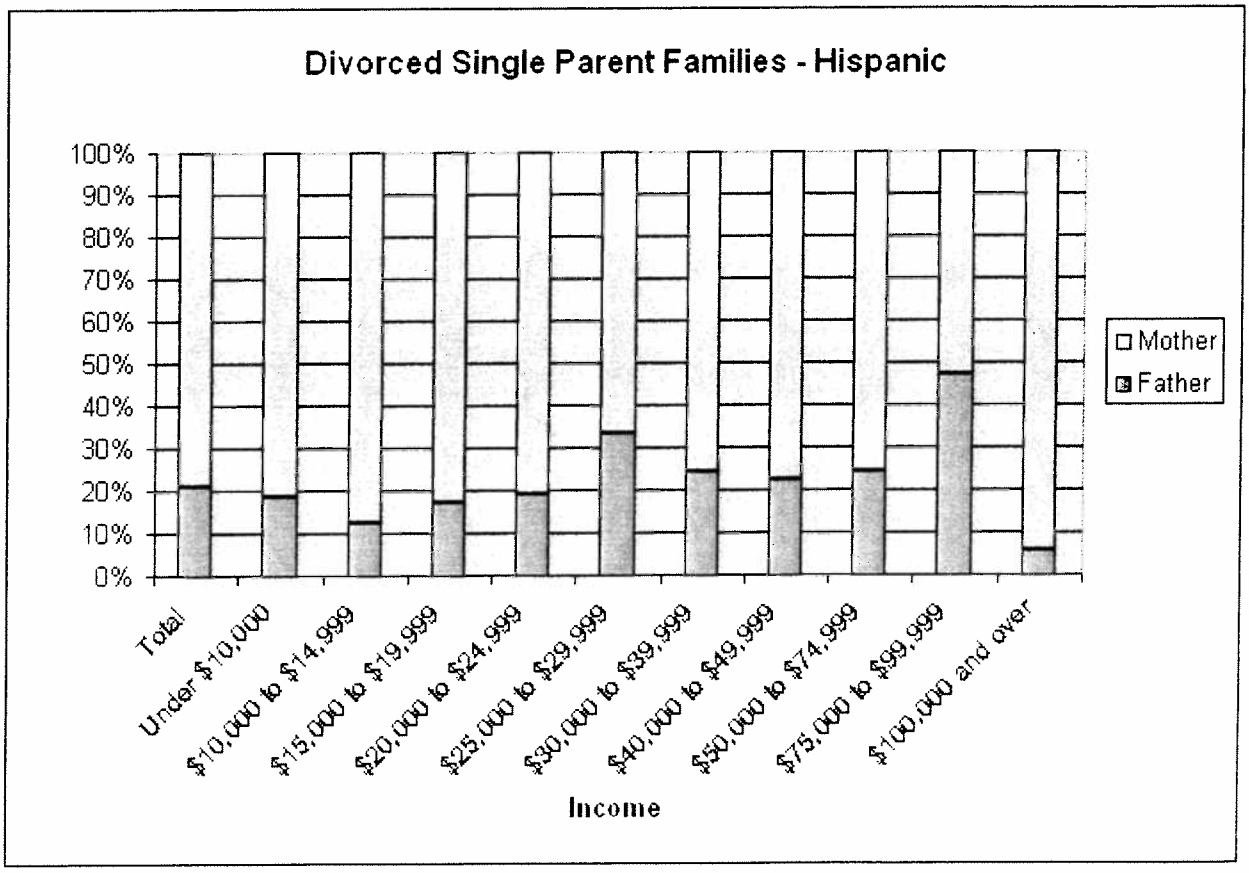
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Divorced Single Parent Families - Black
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Never Married Single Parent Families - Hispanic
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income


Divorced Single Parent Families - Hispanic
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Mother
Father
Total
Under $10,000
$10,000 to $14,999
$15,000 to $19,999
$20,000 to $24,999
$25,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 and over
Income

Update January 18, 2006

HOUSE BILL No. 5267

October 6, 2005, Introduced by Reps. Mortimer, Gosselin, Hoogendyk, Sheen, Vander Veen, Huizenga, Hummel, Ward, Taub, Caswell and Gaffney and referred to the Committee on Family and Children Services.

A bill to amend 1970 PA 91, entitled

"Child custody act of 1970,"

by amending section 6a (MCL 722.26a), as added by 1980 PA 434.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 6a. **(1) In a custody dispute between parents, the court shall order joint custody unless either of the following applies:**

(a) The court determines by clear and convincing evidence that a parent is unfit, unwilling, or unable to care for the child.

(b) A parent moves his or her residence outside the school district that the child has attended during the previous 1-year period preceding the initiation of the action and is unable to maintain the child's school schedule without interruption. If a parent is unable to maintain the child's school schedule, the court shall order that the parents submit to mediation to determine a custody agreement that maximizes both parents' ability to participate equally in a relationship with their child while accommodating the child's school schedule. A parent may restore joint custody by demonstrating the ability to maintain the child's school schedule.

(2) (1) In **If subsection (1) does not apply in a** custody disputes **dispute** between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall

consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.

(b) Whether the parents will be able to cooperate **maintain the child's school schedule** and generally agree concerning important decisions affecting the welfare of the child.

(3) (2) If the parents agree on joint **in writing to a** custody **arrangement**, the court shall award joint **grant that** custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child **arrangement**.

(4) (3) If the court awards joint custody, the court may **shall** include in its award a statement regarding when the child shall reside **resides** with each parent , or may **and shall** provide that physical custody be **is** shared by the parents in a manner to assure the child continuing contact with both parents **alternately for specific and substantially equal periods of time**.

(5) (4) During the time a child resides with a parent, that parent shall decide all routine matters concerning the child.

(6) (5) If there is a dispute regarding residency, the court shall state the basis for a residency award on the record or in writing.

(7) (6) Joint custody shall **does** not eliminate the responsibility for child support. Each parent shall be **is**

responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall **does** not constitute grounds for modifying a support order.

(8) (7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is **are** specified:

(a) That the child shall reside **resides** alternately for specific **and substantially equal** periods **of time** with each of the parents **parent**.

(b) That the parents shall share decision-making authority as to **all of** the important decisions affecting the welfare of the child**, including, but not limited to, the child's education, religious training, and medical treatment**.

RIGHT OF SHARED PARENTING
POSITION PAPER

DADS OF MICHIGAN PAC (248) 559-DADS (3237)

Issue: Whether state trial courts should continue to flagrantly ignore the U.S. constitutionally-protected rights of parents to *equal* child custody in the absence of clear and convincing evidence of physical, psychological, or sexual abuse.

Current Law: While current law allows state trial courts discretion to consider joint (physical/legal) custody of minor children to their parents in certain cases, it does not recognize it as an U.S. constitutional presumption to be waived only in exceptional cases. State trial courts routinely terminate custody rights in no-fault divorce cases and ignore biological fathers' rights in nearly all single parent custody cases.

Position of D.O.M: A state trial court should always recognize the equal rights and responsibilities of both biological parents to the care, custody, and nurturing of their minor children, in the absence of clear and convincing unfitness. This is a civil rights issue.

Reasons for Support:

I. A custody decision should focus upon the U.S. constitutional custody rights and responsibilities of parents first and the unfitness of parents afterwards. The "Best interests of children" are typically served by encouraging and facilitating maximum involvement among *both* parents and children I.

II. Since courts currently award joint custody as it relates to the decision-making abilities of parents, the courts are rarely presented with a true and accurate picture due the contentiousness of no-fault divorces, the adversarial climate of family courts, and their historically biased custody rulings favoring a single parent (mothers) in 88% of cases2.

III. Current law requires trial courts to make findings on requests for joint custody. Trial courts should make findings on reasons for *not* awarding joint physical/legal custody awards.

IV. Where trial courts must determine custody under existing child custody factors, mothers receive sole physical custody in the overwhelming majority of cases. Fathers are required to motion separately for visitation (parenting time) in order to exercise their parental responsibilities.

V. Joint custody awards should not necessarily reflect the voluntary distribution of parental involvement in an intact household prior to divorce. The environment of a two-household, non-intact family will place new demands upon parents and children alike.

VI. A joint physical/legal custody award will practically guarantee a greater involvement of both parents in the lives and activities of their children. Typical current stipulated and non-stipulated visitation (parenting time) awards hamper the effective involvement of both parents in their child's development post divorce. Custody awards to unmarried mothers seldom involve child visitation of biological fathers.

VII. An unfit parent is easily defined by the U.S. constitution and upheld by the U.S. Supreme Court and does not go beyond physical, psychological, or child abuse. If parental unfitness were to be defined by current Michigan domestic violence statutes, then few parents (married or otherwise) would be deemed fit to parent.

VIII. There are indeed times when joint physical/legal custody is not in the best interest of the children, but these times are the exceptions and involve physical, psychological, or child abuse.

IX. The Parental Parity Bill will dramatically reduce the documented bias of custody awards by state trial courts while reducing legal litigation and its associated costs; which also serve to reduce the marital assets that would ordinarily be available for the minor children.

X The Parental Parity Bill would encourage both parents to remain accessible to their children. Court discretion can be utilized to determine specific physical custody durations based upon circumstances.

'.Outcomes of Joint Custody"; American Psychology, Div. Of School Psychology, June 1995.
NCHS, 1998